

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA . CR. NO. H-12-691-2
VS. . HOUSTON, TEXAS
DAVID MORSE BARRY . APRIL 23, 2014
8:30 A.M. to 4:30 P.M.

DAY 3 of 5
TRANSCRIPT of BENCH TRIAL
BEFORE THE HONORABLE LEE H. ROSENTHAL
UNITED STATES DISTRICT JUDGE

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District Court, Southern District of Texas.

Proceedings recorded by mechanical stenography, transcript
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P R O C E E D I N G S

(Open court, Defendant present.)

THE COURT: Good morning.

MS. ZACK: Good morning.

THE COURT: Go ahead and be seated. I think we're ready to proceed.

MS. ZACK: Yes, Your Honor.

MS. MINICK: Yes, Your Honor. Your Honor, at this time the defense would call David Barry.

THE COURT: All right. Mr. Barry, please come forward. Raise your right hand to be sworn, please.

(David Morse Barry, Defendant, sworn.)

THE COURT: All right. Please be seated.

MS. MINICK: May I begin, Your Honor?

THE COURT: You may.

MS. MINICK: Thank you.

DIRECT EXAMINATION

BY MS. MINICK:

Q. Would you please introduce yourself to the Judge?

A. Yes, ma'am. Good morning, Your Honor. My name is David Barry.

Q. And how old are you, David?

A. I'm 55.

Q. And where did you grow up -- or where were you born?

A. I was born near Buffalo, New York.

Barry - Direct by Ms. Minick

1 Q. And is that where you grew up?

2 A. Up until I was about six years of age and then we moved to
3 Waterville, Ohio.

4 Q. And did you graduate from high school there in Ohio?

5 A. Yes, ma'am, I did, in 1976.

6 Q. Did you attend college, David?

7 A. After graduation my dad got transferred to Arkansas, and I
8 took one semester at Arkansas State University.

9 *THE COURT:* If I may interrupt. This is a formal
10 proceeding. If you could address him as Mr. Barry, I think
11 that would be more appropriate for the setting.

12 *MS. MINICK:* Yes, ma'am.

13 *THE COURT:* Thank you.

14 BY MS. MINICK:

15 Q. Mr. Barry, did you -- after your college semester, what did
16 you do next?

17 A. I was working for a company in Blytheville, Arkansas, up
18 until I joined the Air Force in 1979.

19 Q. And prior to that, were you married?

20 A. I was. I was married for a short period of time in 1977.

21 Q. And why did you get a divorce?

22 A. I caught my wife cheating with another man.

23 Q. And I'm sorry, did you state for the Court what branch of
24 the military you were in?

25 A. I was in the Air Force.

Barry - Direct by Ms. Minick

1 Q. What did you do in that position?

2 A. I was a computer operator.

3 Q. And how old were you at that time?

4 A. I was 23 years of age.

5 Q. Did you receive any special recognition while in the
6 military?

7 A. I received quite a few. I made base airman of the month
8 twice while I was in and then I also made below the zone senior
9 airman, which allowed me to sew on my senior airman stripes one
10 year earlier than what most people would. And I was also asked
11 to be a student leader for the other operators that were in our
12 group.

13 Q. And how were you discharged, Mr. Barry?

14 A. I received an honorable discharge.

15 Q. After you were discharged from the Army -- or, excuse me,
16 from the Air Force, what did you do next?

17 A. I was offered a job with Mobil Oil in Dallas, Texas.

18 Q. What were you doing in that capacity?

19 A. What we were doing, we were operating the Cyber 7400, and
20 it was doing research for Mobil -- or for oil exploration for
21 Mobil and for BP.

22 Q. And where were you living at this time?

23 A. I was living -- actually living in Fort Worth with my
24 parents.

25 Q. Did you have any siblings?

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1 A. Yes, ma'am. I have an older brother and sister and I have
2 a younger brother and sister.

3 Q. And were y'all close?

4 A. Very close.

5 Q. Okay. So at the time that you got out of the military, you
6 were then living with your parents; is that right?

7 A. Yes, ma'am.

8 Q. Were any of your siblings living there at the time as well?

9 A. No, not at that time.

10 Q. When did you move to Wichita Falls?

11 A. In 1993.

12 Q. And where were you living when you were in Wichita Falls?

13 A. Well, I moved down with my parents because they had asked
14 me to move in with them to help take care of my grandparents
15 because they had Alzheimer's disease.

16 Q. And did you do that?

17 A. Yes, ma'am, I did.

18 Q. Now, at some point in time did you meet a man by the name
19 of Mark Peterson?

20 A. Yes, I did.

21 Q. And when was that?

22 A. I believe it was April of '93.

23 Q. And how did y'all meet?

24 A. The church that I attended, one of the members that was in
25 there, she used to have card parties or a luncheon after church

Barry - Direct by Ms. Minick

1 service and Mark was friends with her and so they invited me
2 over one time and I had met Mark and we kind of talked from
3 there and developed a relationship.

4 Q. And what year was that, if you recall?

5 A. '93.

6 Q. Did you and Mr. Peterson move into together?

7 A. Yes, ma'am, later in 1993.

8 Q. And where did y'all move to?

9 A. Well, he had a home at -- on West Rogers, and I just moved
10 in with him in that home.

11 Q. Were you working at the time?

12 A. Yes, ma'am. I was working for Howmet Industries as an
13 autoCAD drafter.

14 Q. And what were you doing -- what did you do as an autoCAD?

15 A. Well, an autoCAD, what it was, is we were designing jet
16 engine parts, so it was considered what they called mechanical
17 engineering.

18 Q. At any point, Mr. Barry, did you yourself own a business?

19 A. Yes, ma'am. In 1996 I opened up a stained glass business,
20 and I had that open until late in 2000.

21 Q. And how did you learn how to get -- or do stained glass?

22 A. There was another stained glass company in Wichita Falls
23 and they offered classes, so I took one of the classes through
24 her and then later I took more classes and also glass blowing
25 from an individual in Crowley, Texas.

Barry - Direct by Ms. Minick

1 Q. Did you get pretty good at it?

2 A. Yes, I did. With my own business I did a lot of, you know,
3 churches, a lot of businesses. A lot of my windows and doors
4 were in the parade of homes. So I had contractors that were
5 requesting my service.

6 Q. And you owned that business, correct?

7 A. Yes, ma'am.

8 Q. Did you have any employees?

9 A. No, ma'am, it was just me.

10 Q. Did you have any friends in Wichita Falls?

11 A. I did, but none that I socialized with. They were more
12 just like acquaintance that I might talk to on the phone, but
13 nobody that I ever, you know, went out with or invited to the
14 house.

15 Q. Okay. So when you and Mr. Peterson were living together,
16 y'all didn't socialize much?

17 A. No, ma'am, not at all.

18 Q. What were some of your other interests or activities?

19 A. I was -- I mean, I had been involved in music since I was
20 about 8 years old and so I continued with that and I was the
21 organist at our church until I transferred to Saint Stephens,
22 then I became the organist at that church.

23 Q. And Saint Stephens, was that the church that you attended
24 up until just recently?

25 A. Yes, ma'am.

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1 Q. Were you and your mother close?

2 A. Yes, ma'am, very close.

3 Q. Is she still living, Mr. Barry?

4 A. No, ma'am.

5 Q. When did she pass away?

6 A. She passed away February of last year.

7 Q. What kind of things did you and your mother do together?

8 A. Mom, I got mom interested in stained glass and I would work
9 with her with doing Tiffany lamps. But she was also very much
10 into quilting. And I learned how to quilt with her, so I made
11 a lot of my own quilts and asked for her help at the time.

12 Q. Do you feel like you had a good upbringing, Mr. Barry?

13 A. Yes, ma'am.

14 Q. Did that make you want to have children?

15 A. Yes, very much so. I've always wanted to be a parent.

16 Q. And when was it that you decided -- I don't know how to say
17 it exactly, determined that you were homosexual?

18 A. That's kind of hard to say, because it was probably right
19 after the military that I actually pursued the gay lifestyle.
20 I kind of kept it hidden into myself up until that point,
21 because I was fighting my own sexual orientation.

22 Q. Now, when you say "pursued the gay lifestyle," what do you
23 mean by that?

24 A. I had gone to a couple of the nightclubs there in Dallas,
25 Texas, and started meeting, you know, other individuals.

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1 Q. But once you and Mr. Peterson met and became a couple, were
2 you monogamous?

3 A. Very -- well, I was, yes, ma'am, very much so.

4 Q. Okay. And in using your previous term "the gay lifestyle,"
5 did you and Mark continue to engage in that?

6 A. Well, only in our home life. We didn't go out to any of
7 the clubs. We didn't go to social events that, you know, most
8 gay men, you know, do. Mark and I would just go to work and
9 come home.

10 Q. All right. What was Mark doing at the time?

11 A. When we first met, Mark had his own lawn service and then
12 later went back to work for PPG as a QC tech.

13 Q. And what is that?

14 A. Quality control. He would check the glass to make sure
15 that there was no flaws in it, no scratches before they cut it,
16 process it and send it out to their customers.

17 Q. Now, did you and Mark discuss having children?

18 A. Yes, ma'am, we did.

19 Q. And when did y'all start talking about that?

20 A. Somewhere around 2004, 2005, because we were getting, you
21 know, up there in age, you know. We had talked about, you
22 know, possibly having kids.

23 Q. And I'm sorry if I -- did you say how old you were,
24 Mr. Barry?

25 A. At that time?

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1 Q. Yes.

2 A. Let's see 2004, 10 years ago, so I would have been 45.

3 Q. How did you first begin the process of --

4 A. Well, after Mark agreed to it, I called CPS and asked them
5 about going through theirs and becoming a foster parent.

6 Because we decided to be foster parents to see if it was
7 something that we really wanted to take on, you know, for the
8 next, you know, 15 or 18 years.

9 Q. Was Mark as on board as you were initially?

10 A. At the very beginning, no. I think he just did it, you
11 know, for me, but after we got into it, he kind of got excited
12 about it and was really looking forward to it.

13 Q. Was he as involved with the children as you were?

14 A. Not on a day-to-day basis, no, ma'am.

15 Q. Okay. So you were essentially their primary caregiver?

16 A. Yes, ma'am.

17 Q. What did you first do to begin the process of fostering
18 children?

19 A. You have to go through the initial interview with CPS and
20 then once they determine that you're a good candidate, then
21 they set up for you to take what they call pride classes, which
22 are classes that you have to take to go through the different
23 phases of fostering parent -- or being a foster parent.

24 Q. And how long were those classes?

25 A. We took the one that was what they call a fast track and it

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1 was done on Saturdays and they were eight hours each day until
2 we completed the class and that was roughly five, six weeks.

3 Q. Okay. So each Saturday for eight hours?

4 A. Yes, ma'am.

5 Q. Did you have any other special training to become a foster
6 parent?

7 A. No, that was it.

8 Q. Did Mark attend the training -- all the training?

9 A. It was required, because he was in the home.

10 Q. Now, did CPS ever train you on the necessity of checking
11 backgrounds on people that had access or contact with your
12 children?

13 A. No, ma'am. They never brought that up in any of the
14 classes.

15 Q. So they never advised you to check the background of
16 teachers, coaches, any individual that may have access?

17 A. No, ma'am, not at all.

18 Q. Did that ever cross your mind?

19 A. No, it didn't. I never -- that was not something that, you
20 know, most normal people would just think about right off the
21 bat.

22 Q. Did they ever specifically advise you about the state Web
23 site available to the public to check out sex offenders?

24 A. No, ma'am, not at all.

25 Q. Tell me about the first foster children that were placed

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1 with you. How old were they, Mr. Barry?

2 A. The first one that I got, he was roughly 11 years old.

3 They called me up about 4:00 o'clock and said, "We're bringing
4 him over." Brought him in, dropped him off, and took off. And
5 it wasn't until after we sat there that we realized that this
6 child should have never been in our home, because the child
7 had -- he was on medication because he was mentally unstable,
8 and actually they used the term "slightly retarded," in which I
9 find offensive, but that's their terminology. So I called our
10 case manager and I said, "He shouldn't be here because we're
11 not qualified as a -- anything other than a basic home." So
12 the next morning, they came and took him and put him in a
13 therapeutic home.

14 Q. So you weren't equipped to meet those kind of needs for
15 that child?

16 A. No, ma'am.

17 Q. Did you request a specific age or gender --

18 A. I did.

19 Q. -- from CPS?

20 A. I requested that it would be boys, five years of age and
21 older only because I wanted school age kids because of working,
22 and I didn't know if I could handle watching -- or trying to
23 explain to a female how her body changes and the process they
24 go through. I thought it would be easier with boys.

25 Q. Okay. When were you first contacted about fostering O.B.

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1 and R.B.?

2 A. In December 4th of 2000.

3 Q. And how old were the boys at the time?

4 A. They were -- let's see, O.B. was 13 months and R.B. was 27
5 months.

6 Q. And what are their birthdays, Mr. Barry?

7 A. O.B. is October 5th, 2004. R.B. is September 10th, 2003.

8 Q. And how did you feel about fostering two boys at one time?

9 A. Well, when they called me up, they said that -- that I was
10 only going to have them for 45 days. And I thought it was
11 going to be quite a bit, but when they said only 45 days, I
12 thought, well, you know, we'll give them a really good
13 Christmas and then they'll go back home with their family, so
14 Mark and I agreed to it.

15 Q. And when you first got the boys, how did that happen?

16 A. Wow. They called us up and said that they were bringing
17 them over and they showed up about 5:00 o'clock that night with
18 the two boys.

19 Q. The same day?

20 A. Yes, ma'am. And brought them in, said, "Here they are,"
21 introduced us to the kids and said, "If you need anything,
22 here's our card," and they walked out the door.

23 Q. Did they give -- were the children dressed?

24 A. No. The -- O.B. came in, he was wearing a diaper, no
25 shirt, no socks, no shoes, wrapped in just a small fleece

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1 blanket. R.B. came in, he had on a diaper and a T-shirt, no
2 coat, and he was in a blanket. And they just -- they brought
3 nothing else for them. They just said, "Here they are."

4 Q. And that was in December?

5 A. Yes, ma'am.

6 Q. And at that point had they given you any information about
7 the background of the children?

8 A. No. They just told us that they were removed because of
9 the circumstances in the home and that we would, like I said,
10 only have them for 45 days. So that if they --

11 Q. What were the circumstances -- I'm sorry. I didn't mean to
12 interrupt. What were the circumstances of their home?

13 A. They were being neglected. They were not being fed. The
14 home was just -- was unlivable.

15 Q. So at 5:00 o'clock on December 4th when you received two
16 little boys, one still a toddler -- or actually just over a
17 year old, what did you do?

18 A. Well, when they brought them in, they didn't tell us that
19 they weren't bringing anything with. They said, "Oh, they'll
20 have everything." Well, when they came in, they had nothing.
21 So I kind of dumped the kids in Mark's lap. And I had to go to
22 Walmart to buy bottles and diapers and pajamas and the whole
23 nine yards and then come back and try to take care of these
24 kids.

25 Q. And so you did that?

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1 A. Yes, ma'am.

2 Q. How was the first night with the boys?

3 A. Rough. When I got back, Mark had R.B. sitting in his lap
4 and I had O.B. in my lap. We were trying to feed them. And
5 they were -- they were good, but when we tried to get them
6 cleaned up to put into bed, they did nothing but scream and
7 holler. They did not want to be put down. So that night Mark
8 and I had to sleep in the recliners with the boys in our laps,
9 so that they would fall asleep.

10 Q. And were they able to do that? Were you able to comfort
11 them?

12 A. That first night, yes, ma'am.

13 Q. Were there times that it was difficult?

14 A. Very much so. Like if Mark was working the second shift,
15 which was from 7:00 p.m. to 7:00 a.m. and I would be left with
16 them, it was real hard trying to get them both down, where I
17 would have them both in my lap until they fell asleep and then
18 I could carry them in and put them in their bed and hopefully
19 they would sleep through the night.

20 Q. Did they come to be comforted more by you as time went on?

21 A. Very much so. I was their, you know, primary caregiver, so
22 they looked to me for everything.

23 Q. Did you learn about --

24 MS. ZACK: Your Honor, I'm going to object to the
25 relevance of the raising of these children. It's not relevant

Barry - Direct by Ms. Minick

1 to the production of child pornography.

2 *THE COURT:* Well, I'm not sure, because you introduced
3 a fair amount of evidence about relationships, so with -- as
4 far as was available by way of information to be gleaned from
5 the photographs. So I think it's relevant. I'm going to allow
6 it.

7 *MS. ZACK:* Yes, Your Honor.

8 *MS. MINICK:* Thank you, Judge.

9 BY MS. MINICK:

10 Q. Did you learn about the boys' developmental delays?

11 A. It wasn't until a couple weeks later when I was notified by
12 an individual that worked for North Texas Rehab and they had a
13 division in there called ECI, Early Childhood Intervention.
14 And she said that she started working with the children when
15 they were with their biological mother because they -- their
16 motor skills -- or their development as far as their speech,
17 they had none.

18 Q. So when O.B. and R.B. came to you, O.B. was 1 and R.B. was
19 2 years and 3 months; is that correct?

20 A. Correct.

21 Q. Okay. And while it may not be unusual for a 1-year-old not
22 to be able to speak, certainly a two-and-a-half-year-old
23 essentially could communicate; is that correct?

24 A. Yes, ma'am.

25 *MS. ZACK:* Objection. Leading.

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1 *THE COURT:* I'll sustain the objection. Refrain from
2 leading.

3 *MS. MINICK:* Thank you, Your Honor.

4 BY MS. MINICK:

5 Q. Mr. Barry, was R.B. able to communicate his needs at the
6 time?

7 A. No. At that point all he could do was grunt and point, and
8 half the time I didn't even know what he wanted.

9 Q. When you were told or became familiar with their delays,
10 were you hesitant about keeping the boys?

11 A. No, ma'am, not at all. I had talked with the individual at
12 ECI, and she explained the process. So I thought, okay, yeah,
13 let's continue on and let's do it. And so she came to our home
14 three times a week until the boys turned 3 years of age, and
15 then she was no longer allowed to do it. They had to go into a
16 different program.

17 Q. And once you pursued that consistent help, did you see the
18 boys responding?

19 A. I did, because we -- I would spend a lot of time with the
20 individual and she would tell me other program -- or other
21 things that we could do, and we started with the educational
22 toys. We started with the computer programs.

23 Q. Did you research certain programs that would help them?

24 *MS. ZACK:* Objection. Leading.

25 *THE COURT:* Sustained.

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1 BY MS. MINICK:

2 Q. Did you do -- how is it that you came about to learn of
3 these programs?

4 A. What I did was I was on my computer and I Googled it with
5 developmentally underdeveloped kids and what people were doing,
6 psychiatrists, teachers, you know, anything that I could find,
7 and that's how I came to learn about the educational toys and
8 the computer programs.

9 Q. What computer programs did you have?

10 A. One was called Reading Rabbit, which would put the story on
11 the computer screen and it would read to them, but it would
12 highlight the words as they read. And then it would ask them
13 questions afterwards and they would have to use the mouse to
14 manipulate, like, you know, what was Roger Rabbit's -- or what
15 was the rabbit's favorite food and it would put stuff up and
16 you would have to click on, you know, the carrots or whatever
17 it said in the story.

18 Q. So did the boys manipulate the mouse to operate the
19 program?

20 MS. ZACK: Objection. Leading.

21 THE COURT: Just because they objected to you leading
22 doesn't mean you have to object to every other question on
23 fairly benign stuff. It's going to waste a lot of time.

24 Don't lead.

25 MS. MINICK: Yes, Your Honor.

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1 *THE COURT:* You both have intelligent witnesses you're
2 putting on. They don't need to be led.

3 BY MS. MINICK:

4 Q. What did the boys do with the program?

5 A. Well, you know, I taught them how to, you know, use the
6 mouse so that they could maneuver inside the program and answer
7 the questions. And, of course, when they got it right, you
8 know, it made all of the funny noises and they got excited
9 about that, so.

10 Q. And how did they respond to this help?

11 A. R.B. was really coming along. I mean, he was beginning to
12 form words. He wasn't really forming sentences, but he was
13 forming words. O.B. still wasn't doing it, and it wasn't until
14 later that we discovered why.

15 Q. Why was that?

16 A. We had gone in with one of the preschools and she -- the
17 teacher had asked me had I ever had his hearing checked. And I
18 said, "No, it wasn't a requirement. I never thought about it."
19 And so we made an appointment and took him over. And we
20 discovered that his canals were so small that the doctor had
21 determined that he was what they call "legally deaf," and at
22 that time he suggested that we put tubes in his ears to correct
23 this problem, which we did.

24 Q. So did you take him to a pediatrician?

25 A. Well, no, not at that point. We had gone to an ear, nose,

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1 and throat specialist in Wichita Falls.

2 Q. Is that where he was tested?

3 A. Yes, ma'am.

4 Q. What did you do as a result of that testing?

5 A. When he told us that the canals were small and needed to
6 have tubes, he suggested -- or his recommendation was that we
7 go ahead and put tubes in his ears. And so I asked him about
8 the process, what it involved, and he -- you know, the doctor
9 informed me. And I said, "Okay. Let's go ahead and do that,
10 because I don't want my child, you know, to be deaf. I'd
11 really like to have him hearing." So he went ahead and
12 scheduled it as outpatient surgery. And we did -- you know,
13 took him over that morning and got the tubes in and took him
14 back home that afternoon.

15 Q. And how old was O.B. at the time?

16 A. A little over 3.

17 Q. Was this before or after -- were they still in your foster
18 care or had they been adopted?

19 A. No, they had already been legally adopted.

20 Q. So let's talk about that, Mr. Barry. It started out as a
21 foster situation, but what happened next?

22 A. Well, we started in 2005 as -- in December 2005 as a foster
23 parent. Then like I said, they told us only 45 days. When it
24 got to the 45 days, the caseworker came and said, "Well, mom's
25 not really doing what she's supposed to, you know. Do you want

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1 us to remove them and find another home or do you want to
2 continue fostering?" And Mark and I talked about it and we
3 agreed to continue fostering.

4 Of course, it kept going on and on and on, and
5 then about eight months into it, they just said, "You know,
6 mom's not going to do anything. She's tested positive for
7 drugs. We're going to go ahead and file termination rights on
8 her. And would you and Mark be interested in adopting?" And
9 at that point we talked about it and agreed.

10 Q. And since you and Mark could not legally be married, did
11 y'all discuss who would be the legal parent of the children?

12 A. Yes, ma'am. Because I was the -- because I was the primary
13 in the pride classes and through CPS, I was the only one that
14 technically was eligible. It was not something that we had --
15 could to discuss or even change. They just said, you know,
16 you're it.

17 Q. Mr. Barry, why did you want to be a parent?

18 A. I've always wanted to be a parent, because, you know, I
19 watched my friends, you know, have kids and, you know,
20 grandkids. And unfortunately with my lifestyle, it wasn't
21 something that we could, you know, do on our own. We had to
22 pursue avenues like adoption.

23 Q. Did CPS -- did you have to do any additional training or
24 background checks for the adoption to go through?

25 A. No, ma'am. They just came in and checked out the home and

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1 made sure that, you know, it was still up to par by CPS's
2 standards. And then we went -- hired an attorney, went to
3 court, and they brought -- they put each one of us on the stand
4 and asked us questions about, you know, the best interests of
5 the boys, you know, was the home livable, and the judge then
6 granted the adoption.

7 Q. Did CPS testify at the trial?

8 A. Yes, ma'am, they did.

9 Q. And did they approve you as an adoptive parent?

10 A. Yes, ma'am, they did.

11 Q. Did you tell them at the time that you were a nudist?

12 A. No, ma'am, because I wasn't at that time.

13 *THE COURT:* How long ago was that? What was the exact
14 year?

15 *THE WITNESS:* Of the adoption?

16 *THE COURT:* Yes.

17 *THE WITNESS:* In April of 2007.

18 *THE COURT:* Thank you.

19 BY MS. MINICK:

20 Q. Did the boys have any other medical issues that you as a
21 new parent had to deal with?

22 A. Medical -- the only one that we had with them, when they
23 first brought the boys to us, R.B. was complaining about his
24 stomach and we discovered that he had a perforated bowel and
25 had that taken care of.

Barry - Direct by Ms. Minick

1 Q. When was that?

2 A. They were also on -- they said that they had -- I can't
3 remember the name of it. It was the respiratory disease.

4 Q. It's okay, David -- or, excuse me, Mr. Barry. But you took
5 them to the doctor regularly?

6 A. Correct.

7 Q. Did you continue any training or rehabilitative programs
8 or --

9 A. Once the boys hit 3 years of age, they were no longer
10 eligible for ECI. And so the next step would have been either
11 Head Start or a preschool that's designed to take care of kids
12 with developmental issues.

13 Q. And what did you do?

14 A. I got them into the preschool for -- starting at the age
15 of 3, at Cunningham Elementary.

16 Q. How did you find out about the Head Start Program?

17 A. I was given that information by North Texas Rehab.

18 Q. And did you learn any information about the program?

19 A. I did. I actually met with the teachers and discussed with
20 them, I told them what the problem was with the two boys and
21 they said, you know, we've handled that many times over the
22 years and this is what we do. So, R.B. was the first one to
23 go, because he was past 3, where O.B. was still getting ECI at
24 the home because he was still under the age of 3.

25 Q. Were the boys able to start school on time?

Barry - Direct by Ms. Minick

1 A. Yes, they were.

2 Q. Did you get involved in their school?

3 A. Constantly.

4 Q. How's that?

5 A. Every program they had, I was there.

6 Q. How were you involved specifically?

7 A. If they had -- like in the kindergarten, they would have
8 what they call "Mom's Day" where they would have -- come up and
9 they would do like little arts thing and then they would have,
10 you know, juice and cookies with them. If I -- because I
11 wasn't working at that particular point, I would go, because, I
12 mean, they didn't have a mom, so.

13 Q. So did you fill the stereotypical mom role?

14 A. Basically, yes.

15 Q. Did you engage your children in extracurricular activities?

16 A. Yes, I did. When they were old enough, both the boys got
17 into soccer. They got -- which, you know, I was involved in,
18 because I was the one that had to take them to practice and
19 take them to all their games and then afterwards --

20 Q. Did they enjoy that?

21 A. Very much so, because -- well, O.B.'s team, they were
22 undefeated, so they got a trophy for it. R.B.'s team took
23 second place and they got a little bit smaller trophy. So, it
24 was kind of competition between the two.

25 Q. Did you practice with them?

Barry - Direct by Ms. Minick

1 A. Sure did. I bought a net, like most parents do. We had it
2 in the front yard. Bought the different size soccer balls that
3 they used and, you know, showed them how to play.

4 Q. What other things did the boys like, Mr. Barry?

5 A. Oh, man. They liked the Wii, because that was, you know,
6 the kids' video games. We did the workout. Taught them how to
7 roller skate. Went to the park and did that. We taught them
8 how to ride bikes. We would go on bike rides at the park as
9 well. Swimming. You know, anything a parent would do.

10 Q. Were there things that you taught them in the home as well?

11 A. When I would do my normal chores, you know, as a parent for
12 cleaning and that, the kids came in and they wanted to help.
13 So I would teach them how to separate clothes into different
14 piles, and they would help me with laundry. And then when I
15 cooked, they were interested in that. So I would give them a
16 stool and they would be the ones, you know, mixing up the, you
17 know, the salt and the flour together and that and, you know,
18 would want to learn how to cook. As they got older, they knew
19 the different things and, you know, we would, you know, cook
20 the meals together.

21 Q. Did you teach them anything else in the home, as far as
22 running the home or --

23 A. Well, we did. I mean, they would help with the chores.
24 They would want to -- you know, they'd help me sweep. You
25 know, they would help me paint, if we were painting the home.

Barry - Direct by Ms. Minick

1 They would help me, you know, wash windows or whatever, you
2 know, just typical things that, you know, a parent would teach
3 a child.

4 Q. Did they seem to enjoy the time with you?

5 A. Oh, they did. Yeah, we had a blast.

6 Q. How did they seem to be responding with your attention?

7 A. Well, they were thriving. I mean, they were little
8 sticktights to me on most of the stuff. Any time that I
9 wanted -- that I needed to do something in the home or around
10 the home, they were right there wanting to help.

11 Q. Did they attend church with you?

12 A. Yes, they did. They were members of St. Stephen's
13 Episcopal Church, and that's where they were baptized.

14 Q. I'll just ask --

15 *THE COURT:* Yeah, you can do that. You can get us
16 some exhibit stickers. And frankly if you don't have a
17 sticker, just write it on the front. Thank you.

18 *MS. MINICK:* They're not very sticky.

19 BY MS. MINICK:

20 Q. Mr. Barry, I want to show you what's been marked as Defense
21 Exhibit No. 13 and ask you to take a look at that. Do you
22 recognize that?

23 A. Yes, ma'am.

24 Q. Does that fairly and accurately portray what it intends
25 to -- what is that, first of all?

Barry - Direct by Ms. Minick

1 A. That was taken right after we got the boys back from CPS.

2 Q. Okay. And how old were the boys at the time? Do you know?

3 A. Let's see, that was 2012. So they would have been 7 and 8.

4 *THE COURT:* Thank you.

5 BY MS. MINICK:

6 Q. Now, you mentioned they attended your church with you,
7 correct?

8 A. Correct.

9 Q. Let me show you what's been marked as Defendant's Exhibit
10 No. 6 and ask you to identify that. Do you recognize who's
11 portrayed in that portrait -- in that picture --

12 A. Yes, ma'am.

13 Q. -- Defense Exhibit No. 6? And who is in that?

14 A. That's myself, R.B. and O.B.

15 Q. And when was that taken?

16 A. Their baptism.

17 Q. And when was that?

18 A. In 2013.

19 Q. Let me show you what's been marked as Defendant's Exhibit
20 No. 10. Who's portrayed in that picture?

21 A. O.B.

22 Q. And what is he doing?

23 A. He's learning how to ride a bicycle.

24 Q. And does that fairly and accurately portray O.B. that day?

25 A. Yes, ma'am.

Barry - Direct by Ms. Minick

1 Q. Let me show you what's been marked as Defendant's Exhibit
2 No. 11. Do you recognize that?

3 A. Yes, ma'am. That's our front yard.

4 Q. And who's depicted in that picture?

5 A. O.B. and R.B. and Mark.

6 Q. And what are they doing?

7 A. They were learning how to mow the front yard.

8 Q. And I'll show you what's been marked as Defendant's Exhibit
9 No. 12. Do you recognize who's in that picture?

10 A. Yes, that's R.B. and O.B.

11 Q. And do you know when was that taken?

12 A. That was the day of their baptism, before we left to go to
13 church.

14 Q. And where was that photograph taken?

15 A. It was taken in our -- in Mark's and my living room.

16 Q. Do you know who took it?

17 A. I did.

18 Q. In Defendant's Exhibit No. 12, there's a stained glass
19 behind them. Is that one of your pieces?

20 A. Yes, ma'am, it is.

21 *MS. MINICK:* Your Honor, at this time we would offer
22 Defendant's Exhibits 11 -- excuse me, 10, 11, 12, 13, and
23 Defense Exhibit 6.

24 *THE COURT:* Any objection on behalf of the Government?

25 *MS. MINICK:* I would offer them to defense counsel.

Barry - Direct by Ms. Minick

1 *MS. ZACK:* No, Your Honor. I believe we've already
2 discussed this, and those images have previously been admitted.

3 *THE COURT:* I don't think they've been previously
4 admitted, although they might have been and I just lost track,
5 but just to be sure, the numbers are 10, 11 --

6 *MS. MINICK:* 10, 11, 12, 13, and 6, Your Honor.

7 *THE COURT:* Got it. Thank you very much. They're
8 admitted.

9 *MS. MINICK:* If the Court would like to have the
10 exhibits at this time.

11 *THE COURT:* Yes. Thank you.

12 BY MS. MINICK:

13 Q. Were the boys ever a disciplinary problem, Mr. Barry?

14 A. No more than any other typical child. I mean, they
15 weren't -- you know, just simple things, you know, like, you
16 know, grabbing the toy out of the other child's hand or --

17 Q. How did you typically discipline them, if there was a
18 problem?

19 A. Normally it was a time-out in their room.

20 Q. And how did you -- how did you do that time-out?

21 A. The time-out from, what I researched on it, normally a
22 time-out is one minute for each year of their age.

23 Q. Did that typically suffice for discipline?

24 A. At the beginning, yes.

25 Q. Okay. How were the boys' grades at this time?

Barry - Direct by Ms. Minick

1 A. They were doing really well. They were both receiving all
2 As or As and Bs.

3 Q. Did you help them with their homework or no?

4 A. Daily.

5 Q. Did the boys know you were gay, Mr. Barry?

6 A. It wasn't anything that we had discussed at that point, no,
7 ma'am.

8 Q. Are you yourself attracted to children?

9 A. No, ma'am, not at all.

10 Q. Does child pornography excite you, Mr. Barry?

11 A. No, ma'am.

12 Q. How do you feel about people who are attracted to or abuse
13 little children?

14 A. I don't agree with it. I've never agreed with it. I find
15 it disgusting.

16 Q. Were you ever -- excuse me. Were you ever concerned about
17 the boys being teased due to your lifestyle?

18 A. Not right at the very beginning. It was something that
19 probably wouldn't happen until we got -- until they got older,
20 where kids would understand what it meant to be gay.

21 Q. What were the things that you were concerned about as far
22 as their being teased, their circumstances?

23 A. That they didn't have, you know, a mom, that they were
24 living with two gay men, you know, that they might be gay
25 because we were gay, typical things that I've heard and read

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1 about with other families, you know, gay and lesbian families
2 that had children.

3 Q. What did you do as a result of those concerns?

4 A. Well, I mean, I was researching it, but I was looking for
5 ways to build their confidence. I was looking for ways to make
6 sure that they were very outgoing and could handle themselves
7 when that point arose.

8 Q. Did -- so you did such research about self-image; is that
9 right?

10 A. That's correct.

11 Q. Okay. And what did you use to do that research?

12 A. I had a desktop at the time and I was using what they call
13 Bing, which is a search engine and I came across quite a few
14 articles dealing with family nudism and children in nudity and
15 read reports from various psychologists that did studies on
16 family nudism and how it affected the children and how the
17 children grew as they were in the lifestyle, and it showed that
18 they were more outgoing. They were more confident of
19 themselves. They were more accepting of people in society,
20 where we kind of as other human beings have a tendency here,
21 oh, somebody is a punk rocker, ooh, that's bad. Oh, they're
22 gay, ooh, that's bad. Where these children were more accepting
23 because they were in a different lifestyle as well.

24 Q. You said you did this on a desktop. Is this the same
25 computer we're talking about that we've been talking about or

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1 that's been talked about?

2 A. No, ma'am. This was an older Dell computer that broke down
3 and I had sold it to get money so I could buy the laptop.

4 Q. Did you ever yourself hang around the house without clothes
5 on prior to that?

6 A. Prior to that? No, ma'am.

7 Q. How did your family feel about being naked growing up?

8 A. They never -- I mean, it wasn't something that was
9 discussed because we didn't do it in the home, but yet my
10 parents had pictures of when I was 2 and 3 years old where I
11 was in the dooryard or in the swimming pool and I would take
12 off my swimsuit and would be -- and they would take a picture.

13 Q. So as you're running around involved in whatever, they
14 would take pictures?

15 A. Yes, ma'am.

16 Q. Did you -- or to you, can you define nudists?

17 A. A nudist is somebody that enjoys everyday activities minus
18 the textile.

19 Q. Minus the clothing?

20 A. Correct.

21 Q. Okay. And how does that -- do you know what a naturist is?

22 A. A naturist is somebody that is naked not just in their
23 homes but also in nature, that communes with nature, kind of
24 like what we said with the old hippy, they communed with
25 nature. It's just that they did it without clothes.

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1 Q. So would you characterize yourself as a naturist or a
2 nudist?

3 A. Actually I would lean more towards one of naturist, because
4 we were exploring the avenues of trying to go to resorts and
5 that. I had an enclosed in courtyard where I could be in the
6 courtyard, no one else could see me, where I was outdoors
7 naked, so I wasn't just inside the home. I had begun to
8 explore going outside the home.

9 Q. And did you do this prior to anything with the boys' --

10 A. Yes, ma'am.

11 Q. -- involvement?

12 A. Yes, ma'am.

13 Q. What kind of things did you do naked?

14 A. Well, I would do that. It would just be when they weren't
15 home, you know, I would sit around to kind of get myself used
16 to it, but then I would also work out on what they call the Wii
17 workout. I would do those workouts without any clothes.

18 Q. Did you do everything naked?

19 A. No, not everything, but I did a majority of it.

20 Q. Did you force the boys to participate in this?

21 A. No, ma'am, I did not.

22 Q. Did you ever have a conversation with your boys about
23 nudism?

24 A. No, ma'am.

25 Q. Did you -- what kind of terms did you use with the boys, if

Barry - Direct by Ms. Minick

1 any?

2 A. I just -- at that point we just talked that it was a way
3 of -- just a way of life, that people sometimes didn't wear
4 clothes, but we never used the terminology "nudist" or "nudism"
5 or "naturist" or "naturalist" or anything in that line.

6 Q. Did they seem uncomfortable around you when you were doing
7 your workouts?

8 A. No, ma'am, because they actually started doing the workouts
9 with me and we would do the whole program, which is anywhere
10 from 45 minutes to an hour.

11 Q. Did they continue -- well, let me ask you this: Did you
12 notice anything about the effect that being naked had on the
13 boys?

14 A. Once they started doing it, I immediately noticed R.B. was
15 not as shy as he was. He was more outgoing. He was more
16 playful. He would -- he would start to climb, you know, being
17 a little monkey like he was and also engaging more with his
18 brother, where before, you know, he was real quiet. He would
19 sit on the bed or he would sit on the couch and watch TV or
20 hold his animal. He wasn't as outgoing as he was until after
21 we started that.

22 Q. Did you practice nudism around other -- when other people
23 were around?

24 A. Not in the home, no.

25 Q. Why not?

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1 A. Because they weren't into the naturist or nudism.

2 Q. And did you respect that?

3 A. Yes, I did.

4 Q. Was Mark present for all of these times?

5 A. Not all of them, but he was present for some of them, yes,
6 ma'am.

7 Q. How did he feel about it at first?

8 A. At first he was kind of hesitant, because he was -- I don't
9 really want to say ashamed, but he was not happy with his body,
10 because he kept saying he was fat, which I didn't think he was
11 but --

12 Q. Did he begin to participate somewhat?

13 A. Yes, he did.

14 Q. And did you ever -- well, tell us what kind of research you
15 did on the computer in regards to nudism.

16 *MS. ZACK:* Objection. Asked and answered.

17 *THE COURT:* Sustained.

18 BY MS. MINICK:

19 Q. Did you find any -- or what Web sites did you find
20 regarding nudism?

21 A. Well, I found the first ones were the Web sites dealing
22 with family nudism and that was the research ones with -- from
23 the universities, like Dr. Okami's at Berkeley and a few
24 others. And then I found one that was called True Nudists,
25 which --

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1 Q. When was that, Mr. Barry?

2 A. I couldn't give you the exact date on that.

3 Q. What was the purpose for going on there?

4 A. To talk to other nudists, to see if any of them were family
5 nudists and found -- and to ask the questions, you know, how
6 did, you know, their kids do, did -- you know, what did they
7 talk to them about. And I found quite a few other people on
8 there that were family nudists.

9 Q. Did you research family nudist resorts?

10 A. Yes, ma'am, I did.

11 Q. For what purpose?

12 A. For the possibility of going in and getting the kids with
13 other children that were part of family nudists.

14 Q. Explain how you use the Web site True Nudists.

15 A. When you go in, in order to get on it, first of all, you
16 had to create a profile. You had to create a user name and a
17 profile that showed you -- that said where you were from and
18 your age, whether you were male or female, married or not
19 married, and any interests that you might have, hobbies, like,
20 you know, sewing, cooking, whatever. Once they approved you,
21 then you could actually go in to the chat room and chat with
22 other nudists that were in there.

23 Q. And was this a room where several people were engaged in?

24 A. Yeah, anywhere from -- it could be two people that were in
25 the room or it could be -- I think the capacity was a hundred

Barry - Direct by Ms. Minick

1 and twenty-five at the time.

2 Q. So would this be kind of like a streaming conversation?

3 A. Yes, ma'am, everybody was talking at once.

4 Q. So one person would say something and it would pop up on
5 the screen? Am I understanding that correctly?

6 A. Yes, ma'am.

7 Q. And then the next person's comment?

8 A. Yes, ma'am.

9 Q. Could you ever have private conversations between you and
10 another person?

11 A. You could.

12 Q. How did that happen?

13 A. But most of those were done if you had a paid subscription
14 to it, which I never did.

15 Q. So were you ever able to have private conversations with --
16 just a second -- with people that you met there?

17 A. Once people started complaining about it, they opened it up
18 to where you could do a -- an IM chat with another individual,
19 but you couldn't do anything else other than an IM chat. And
20 if I wanted to talk to somebody one on one, if I thought there
21 was somebody that, you know, I needed more information from
22 them, we would exchange Hotmail or MSN screen names and then
23 they would -- we would talk on there.

24 Q. Did you ever come across people in the chat room that you
25 were concerned about?

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1 A. On a couple of different occasions. I had a couple of them
2 that once they allowed the IM chats, we were in there and they
3 started asking questions. Well, are you family nudists? Yes.
4 Well, do you have kids? Yes. You know, what kind --

5 MS. ZACK: I'm going to object to this as
6 nonresponsive.

7 THE COURT: I'll sustain the objection. Reask the
8 question.

9 BY MS. MINICK:

10 Q. Did you ever come across people in there that you were
11 concerned about?

12 A. Yes, ma'am, because --

13 Q. What was -- just a second. Let me ask the question --

14 A. Okay.

15 Q. -- plus the court reporter has to make sure she gets both
16 of us; and if we interrupt each other, it makes it very
17 difficult. Okay?

18 If you were concerned about them, what was it
19 that you were concerned about?

20 A. They were asking what I call creepy questions about myself
21 and the boys.

22 Q. What did you do as a result of those concerns?

23 A. What you do is you save the chat and you give -- and when
24 you save it, it gives you a number and then you go to the
25 moderator and you give him that chat number so that they can

Barry - Direct by Ms. Minick

1 pull it. They'll look at it and if they feel it's something,
2 they normally would remove that individual from the Web site;
3 and if it got too bad, of course, they would have to report it.

4 Q. And did you do that once or on many occasions?

5 A. I did that at least a couple of occasions that I know of.

6 Q. Did you actually tell Detective Jones in a later interview
7 that you did that?

8 A. Yes, ma'am.

9 Q. Did you ever meet any family or friends in the Wichita
10 Falls area that were nudists or naturists?

11 A. Not right off at the beginning, but I eventually did meet a
12 couple of other individuals in Wichita Falls that were nudists.

13 Q. Did you meet anyone on the True Nudist Web site that you
14 later became friends with?

15 A. Yes, ma'am. Craig Noonan.

16 Q. And how did that relationship start?

17 A. We started talking on the True Nudist Web site and it was
18 just typical things, what our interests were as far as, you
19 know, school, activities. We would talk about Christian music,
20 because we were both very much into music.

21 Q. Did you come to find out where Craig lived?

22 A. We just -- we talked about it and he said that he lived in
23 Houston and I said I lived in Wichita Falls.

24 Q. What were you doing as far as work at that time?

25 A. At that time I wasn't working. I was going to school full

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1 time, pursuing my bachelor's degree in social sciences.

2 Q. And do you know what Mr. Noonan was doing at that time?

3 A. He was working as a veterinary technician for one of the
4 clinics here in Houston.

5 Q. How long did you and Mr. Noonan talk?

6 A. It got to the point where we were talking almost every day.

7 Q. And how did you communicate with Mr. Noonan?

8 A. We decided that, you know, we didn't want to really want to
9 go on True Nudist because, you know, our conversation was just
10 everyday stuff. So we would communicate through MSN.

11 Q. Did you ever use Skype?

12 A. I had it on my computer but every time I tried to use it,
13 my computer would crash.

14 Q. So it was basically MSN?

15 A. MSN, yes, ma'am.

16 Q. Now, tell me what you came to learn about Mr. Noonan,
17 Mr. Barry?

18 A. What do you mean by what did I learn?

19 Q. Well, tell me the kind of things that you learned about him
20 as a person through your conversations.

21 A. Well, when we first -- when we first started talking, you
22 know, I learned that he was, you know, into the nudist
23 lifestyle. I learned that he was involved in his church. They
24 would go to the men's service that they had during the week and
25 then on Sunday service. Discovered that he was, you know, very

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1 much -- had a good family that he was involved with. And then
2 after the search warrant was executed in my home, I learned
3 that day that he was a registered sex offender.

4 Q. Did you know that prior to that date?

5 A. No, ma'am, not at all.

6 Q. Did you ever -- so you never checked him out?

7 A. No, ma'am.

8 Q. Did you ever -- was there anything ever in your
9 conversation that made you uneasy about him in order -- that
10 you would need to do that?

11 *MS. ZACK:* Objection. Leading.

12 *THE COURT:* Overruled.

13 A. No, ma'am. Our conversations were just everyday
14 conversation. What did you do today? You know, how is the
15 job? What did you have for lunch? What are you fixing for
16 dinner? He would ask, you know, do the boys have homework or
17 what did you do with the boys today? You know, just everyday
18 conversation you would have with anybody.

19 BY MS. MINICK:

20 Q. How long did you communicate with Mr. Noonan before you
21 decided to visit him?

22 A. About six months.

23 Q. And what was the purpose of the visit?

24 A. I had already completed my bachelor's degree, and Mr.
25 Noonan had invited me down to come check out the area as a

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1 possibility of finding employment with one of the schools down
2 there and to see whether or not I liked the area.

3 Q. And did Mr. Noonan have any connections to school jobs?

4 A. He had friends that were teachers in the school district
5 that I could talk to and possibly meet with, even some of the
6 administrators or heads of the departments that they were in,
7 because some of them were even charter schools.

8 Q. Now, I believe you stated that Mr. Noonan is a nudist --

9 A. Yes, ma'am.

10 Q. -- is that one of the things you learned?

11 A. Yes, ma'am.

12 Q. Did you go there to be naked with him?

13 A. Not at the very beginning, no, ma'am.

14 Q. Okay. What do you mean by that?

15 A. Well, when we got down there, the whole premise of the trip
16 was not to be naked. The whole premise was to check out the
17 area and the schools. It wasn't until a couple of days later
18 that we were talking about it and he came home and he said, "My
19 typical day is" and I said, "It's your home." And so when he
20 got home from work, he took a shower like he normally did and
21 remained naked, at which time the boys wanted to do it, too.

22 Q. Now, the first trip to Houston, approximately when was
23 that?

24 A. Approximately the beginning of June.

25 Q. Were the boys in school at that time?

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1 A. No, ma'am. They had just finished the school year.

2 Q. And what school year had they each finished?

3 A. Kindergarten and the last year of preschool.

4 Q. Had their speech improved such that they could communicate
5 to you?

6 A. Greatly.

7 Q. Why did you take -- well, let me back up. Did you discuss
8 going to Houston with Mr. Peterson?

9 A. Yes, ma'am, I did.

10 Q. And what was his position on that?

11 A. We had talked about it because of the economy in Wichita
12 Falls, that we decided that any place I could get a job was
13 going to be in the best interest of a family and he said we
14 could always, you know, be together, you know, vacation times
15 or on weekends if I got a job outside of Wichita Falls.

16 Q. Now, did you talk to him about Mr. Noonan?

17 A. He knew of him, because I mentioned his name, that we were
18 going down to see him. He never questioned it, never asked
19 anything other than just his name.

20 Q. Were you attracted to Mr. Noonan, Mr. Barry?

21 A. No, ma'am, not at all.

22 Q. Or him to you?

23 *MS. ZACK:* Objection. Calls for speculation.

24 *THE COURT:* I'll sustain that objection.

25 BY MS. MINICK:

Barry - Direct by Ms. Minick

1 Q. Did he ever express any interest in you?

2 A. No, ma'am. Because he was dating one of his coworkers at
3 the time.

4 Q. Why was it important to be around other naked people,
5 Mr. Barry?

6 A. It -- I mean, it wasn't a focus of it, because we had
7 done other things with, you know, nonnudists, but, you know,
8 Mr. Noonan was just somebody that happened to be a nudist and I
9 was trying to, like I said, procure a job, so, you know.

10 Q. Why didn't you leave the boys at home?

11 A. Because Mark was working. I was the primary caregiver. I
12 was the parent. So like any parent, when you go on vacation or
13 you go some place, you know, unless you're going to leave them
14 with somebody, you take them with you.

15 Q. At -- well, did Mr. Noonan ever ask you to bring the boys
16 with you?

17 A. No, ma'am, not at all.

18 Q. Did you inform him that you were bringing them?

19 A. Yes, I did.

20 Q. Did he ever -- did you and he talk about the boys prior to
21 coming, during the multiple conversations?

22 A. Well, he knew that I had -- you know, that I adopted two
23 boys.

24 Q. Did he ever -- did he ever do anything that expressed any
25 unnatural interest in your boys?

Barry - Direct by Ms. Minick

1 A. No, other than, you know, how are the boys, what did they
2 do today.

3 Q. Were there ever any red flags that you saw from
4 Mr. Noonan's behavior?

5 A. No, ma'am, not at all.

6 Q. What kind of things did you learn that made you trust him?

7 A. We would -- like I say, when we got down there the first
8 time, I met other friends of his. I met his roommate. We
9 talked about church. In fact, we even went to their church the
10 first time we went down. He, you know, would -- he brought out
11 the DVDs of his old cartoon shows, Superman and that, you know,
12 specifically for the boys. Nothing that, you know, struck me
13 as being out of the norm.

14 Q. So did it ever occur to you to check out Mr. Noonan?

15 A. No, ma'am.

16 Q. When was the first time that you learned that he was a
17 registered sex offender?

18 A. The day that they executed the search warrant, which was
19 February of 2011.

20 Q. So they told you about it that day?

21 A. Yeah, they asked -- the lead investigator said --

22 *MS. ZACK:* Object as nonresponsive.

23 *THE COURT:* Sustained.

24 BY MS. MINICK:

25 Q. Who told you about Mr. Noonan?

Barry - Direct by Ms. Minick

1 A. The lead detective that was there that executed the search
2 warrant, he had said, oh, by the way, did you know --

3 MS. ZACK: Objection. Nonresponsive and calls for
4 hearsay.

5 THE COURT: I'll sustain the objection. Could you ask
6 a more precise question?

7 Listen carefully to it, sir.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: In a way that doesn't elicit a hearsay
10 response.

11 BY MS. MINICK:

12 Q. I'm sorry. Tell me again who it was that told you about
13 Mr. Noonan's --

14 A. The lead detective, Jesse --

15 Q. Just a second. Oh, I'm sorry. Go ahead.

16 A. Jesse Lara.

17 Q. And when Mr. Lara told you this about Mr. Noonan, what was
18 your reaction?

19 A. I got very sick feeling and to the point where I really
20 thought I was going to throw up.

21 Q. Why was that, Mr. Barry?

22 A. Because thinking about it, I felt that Mr. Noonan had
23 betrayed my trust, my confidence, by not telling me, number
24 one, but, number two, thinking about what maybe his ulterior
25 motive was.

Barry - Direct by Ms. Minick

1 Q. How did you feel about yourself and your decisions at that
2 point, as far as taking your children around Mr. Noonan?

3 A. Had I known, I never would have taken them around him. I
4 realize now that it was very stupid on my part for not checking
5 him out. Of course, everybody -- you know, since that point
6 I've always checked everybody out. I just wished that I would
7 have thought about it before we ever came to Houston the first
8 time.

9 Q. When you were in Houston the first time -- I believe you
10 stated this was end of May, beginning of June, correct?

11 A. Yes, ma'am.

12 Q. And at that time did he show any unnatural interest in your
13 boys?

14 A. No, ma'am, not at all.

15 Q. Did he ever ask for naked pictures of your boys?

16 A. No, he did not.

17 Q. Did he ever ask for pictures of your boys, period?

18 A. No, ma'am.

19 Q. Did Mr. Noonan ever ask you to take naked pictures of the
20 boys and send them to him?

21 A. No, ma'am.

22 Q. Did he ever do anything for the boys that seemed odd to
23 you?

24 A. Looking back, no, ma'am.

25 Q. When you went to Houston the first time, again, what was

Barry - Direct by Ms. Minick

1 the purpose?

2 A. To -- he was going to take us around the Houston area and
3 show us the different schools, communities, and see if I might
4 be interested in possibly applying, you know, for a position
5 down here.

6 Q. And how did you apply for positions?

7 A. Normally you went to the school's Web site, but I was
8 taking the classes through EC-4, Region 4 for the prep to
9 become certified as a teacher. And they sent us a flier for a
10 job fair that they were going to have in Houston --

11 Q. Let me stop you right there. When you were you applying,
12 did you do it online?

13 A. Yes, ma'am.

14 Q. Did you take your computer with you to Houston?

15 A. Oh, I was always took my computer with me, because I was
16 working on my master's degree at the same time as well.

17 Q. Did Craig ask you to bring -- excuse me. Did Mr. Noonan
18 ask you to bring the boys with you when you came to look at --
19 or do a job search?

20 A. No, ma'am.

21 Q. When y'all got there, what kind of things did you do?

22 MS. ZACK: Objection. Vague. When are we talking
23 about? What trip?

24 MS. MINICK: I believe I just stated the first time
25 that they got there in June.

Barry - Direct by Ms. Minick

1 *THE COURT:* Why don't you ask the question the way
2 that it identifies it more clearly, so our record is more
3 clear.

4 BY MS. MINICK:

5 Q. When you got to Houston the first time, you stated at the
6 end of May, beginning of June, did you take -- did you bring
7 the boys with you that first time?

8 A. Yes, ma'am.

9 Q. And did he ask you to bring them?

10 A. No, ma'am, he did not.

11 Q. Once there, did they ever discuss taking pictures of the
12 boys with you?

13 A. I'm sorry. Would you repeat that?

14 Q. Once you got to Houston in June, did he ever discuss taking
15 pictures of the boys with you?

16 A. No, ma'am.

17 Q. Did anyone have cameras at that time, Mr. Barry?

18 A. Mr. Noonan had a camera, yes, ma'am.

19 Q. And do you know what kind of camera it was?

20 A. It was a Casio quick shoot, point shoot digital camera.

21 Q. Did you ever -- did you ever come to find out if that
22 camera had a timer on it?

23 A. Yes, ma'am, I did.

24 Q. How do you know that?

25 A. We -- Mr. Noonan and I had used it, and he had told me that

Barry - Direct by Ms. Minick

1 there was a timer on it.

2 Q. Now, do either of your boys like taking pictures?

3 A. Yes, ma'am. R.B. was, you know, interested in learning how
4 to use the camera.

5 Q. Okay. Had he ever used a camera before he had been to
6 Houston?

7 A. Yes, ma'am, he had. Mark had a little digital camera, and
8 he used to run around the house taking pictures with Mark's
9 camera.

10 Q. Did -- do you know if -- so did he get an opportunity to
11 play with Mr. Noonan's camera?

12 A. Yes, ma'am, he did.

13 Q. And do you know if he was shown how to use it?

14 A. That I couldn't tell you, if he was shown how to use it,
15 other than just press here to take a picture.

16 Q. What was your relationship with Mark at the -- Mr. Peterson
17 at the time that you went to Houston?

18 A. I mean, Mark and I were still a couple, but we were arguing
19 constantly about money and that and we were becoming very
20 estranged because he was spending a lot of time away from home.
21 Of course, I knew he was dealing with his mom, but it -- we
22 weren't even communicating.

23 Q. Did you attend any events while you were in Houston?

24 A. The first trip we had gone over to a friend -- or a family,
25 friends of Mr. Noonan's, the Isaacksons, for a barbecue.

Barry - Direct by Ms. Minick

1 Q. And what were the Isaackson's names?

2 A. Pam and Robert Isaackson.

3 Q. And where was the barbecue?

4 A. At their home, in their backyard.

5 Q. Was this during the day or night?

6 A. It was during the day.

7 Q. And where did they live?

8 A. Ooh, in -- I know it was south of Houston.

9 Q. But in the Houston area?

10 A. Yes, ma'am.

11 Q. Were Pam and Robert married?

12 A. Yes, ma'am.

13 Q. Did they have children?

14 A. Yes, ma'am. They had a boy and a girl.

15 Q. Were they nudists?

16 A. Yes, ma'am, they were.

17 Q. The children as well?

18 A. Yes, ma'am.

19 Q. And were the children present at the barbecue?

20 A. Yes, ma'am, they were.

21 Q. Who all -- who else was present at the barbecue, if anyone?

22 A. Well, the Isaacksons, Mr. Noonan, myself, and the boys, and
23 then later family members of Mr. Isaackson showed up.

24 Q. How old were their children?

25 A. The oldest was, I believe, 11 and the youngest was either 3

Barry - Direct by Ms. Minick

1 or 4.

2 Q. Boy or girl or both?

3 A. The oldest one was a boy. The youngest one was a girl.

4 Q. What were their names? Do you know?

5 A. The boy's name was Brandon. The little girl's name was
6 Willow.

7 Q. And they were present at the barbecue?

8 A. Correct.

9 Q. Did they have any clothes on?

10 A. No, ma'am.

11 Q. Do you know if there were any pictures taken at the
12 barbecue? At that time were you aware of any pictures?

13 A. I didn't know at that time.

14 Q. Did you -- have you come since that time to learn that
15 there were?

16 A. Yes, ma'am.

17 *MS. MINICK:* May I approach? Sorry, Judge. Used to
18 it.

19 *THE COURT:* Yes, you may.

20 BY MS. MINICK:

21 Q. Mr. Barry, I'm going to show you what's previously been
22 marked and admitted as Government Exhibit 4V and 4W and ask you
23 to take a look at those.

24 A. These were pictures that were taken --

25 Q. First of all, do you recognize those pictures?

Barry - Direct by Ms. Minick

1 A. I do, yes.

2 Q. How do you recognize them?

3 A. Well, these were shown to me during the execution of the
4 search warrant.

5 Q. And what do those pictures contain?

6 A. These are pictures of my two boys, Mr. Noonan, and the
7 Isaackson boy.

8 Q. Were you present when those pictures were taken?

9 A. Probably not, because I don't remember anybody having a
10 camera out there. So I may have been indoors, helping Pam get
11 everything ready for the barbecue.

12 *MS. MINICK:* Your Honor, I don't know if the Court
13 would rather me show you the pictures I'm referring to or have
14 them pulled up. Which would you prefer?

15 *THE COURT:* This is fine. All right. Thank you.

16 BY MS. MINICK:

17 Q. So, Mr. Barry, this picture was taken during the first trip
18 that you went to Houston, correct?

19 A. That's correct.

20 Q. Because that's when the barbecue was?

21 A. That's correct.

22 Q. And was this picture admitted in the Wichita Falls trial?

23 A. Yes, ma'am, it was.

24 Q. And that was, again, the CPS termination trial, where they
25 attempted to terminate your parental rights, correct?

Barry - Direct by Ms. Minick

1 A. That's correct.

2 Q. Do you know who took that picture?

3 A. No, ma'am, I sure don't.

4 Q. Do you know what camera was used to take the picture?

5 A. No, ma'am, I sure don't.

6 Q. Was everyone naked that was at the barbecue?

7 A. Yes, ma'am.

8 Q. Do you -- were there other people that showed up at the
9 barbecue later?

10 A. Yes, ma'am.

11 Q. Who was that?

12 A. Family members of Robert Isaackson.

13 Q. How close were the Isaacksons to Mr. Noonan?

14 A. Very close, because they --

15 MS. ZACK: Objection. Calls for speculation.

16 THE COURT: If he knows.

17 BY MS. MINICK:

18 Q. Do you know how close they were -- did you observe them at
19 the --

20 A. I did, and also some of the conversations that Mr. Noonan
21 would tell me that he would go with the Isaacksons to the
22 nudist resort called, I think, Emerald Lake, which is down here
23 in the Houston area, and that he would go over to their house
24 on different occasions for dinner or whatnot.

25 Q. At that time that you met the Isaacksons, did they ever say

Barry - Direct by Ms. Minick

1 anything to you about Mr. Noonan or warn you about anything?

2 *MS. ZACK:* Objection. Calls for a response based on
3 hearsay.

4 *THE COURT:* The question is not what they said, but
5 just the topic that they covered. I'm going to allow it.

6 BY MS. MINICK:

7 Q. Did the Isaacksons say anything to you about Mr. Noonan or
8 warn you about anything? Without saying what they said, did
9 they?

10 A. No, ma'am, because they didn't know either.

11 *MS. ZACK:* Objection. Nonresponsive.

12 *THE COURT:* Sustained.

13 BY MS. MINICK:

14 Q. Did they ever say anything to you at any time, yes or no?

15 A. No, ma'am.

16 Q. Okay. At this barbecue where there were adults and
17 children present naked, was there any sexual touching going on?

18 A. No, ma'am.

19 Q. Did you watch your sons carefully?

20 A. Well, there were other adults there. If I was -- like I
21 said, if I was inside helping, Mr. Isaackson or Craig was out
22 there with the boys.

23 Q. Did y'all enjoy yourselves?

24 A. Oh, we had a blast.

25 Q. Did the boys have fun?

Barry - Direct by Ms. Minick

1 A. They did.

2 Q. Did they enjoy playing with the other children that were
3 there?

4 A. They did, especially after the pool got filled up.

5 Q. And do you know -- well, first of all, do you know if that
6 picture that I showed you -- the pictures, Government's Exhibit
7 4V and 4W, do you know if those were on your computer?

8 A. I didn't until they executed the search warrant and showed
9 me that they were on the -- on my computer.

10 Q. Do you know how they got there?

11 A. I have no idea.

12 Q. Do you know when they got there?

13 A. No, ma'am, I sure don't.

14 Q. But you had your computer in Houston at the time; is that
15 correct?

16 A. That's correct.

17 Q. Did you take it with you each time you went to --

18 A. Every time I went, yes, ma'am.

19 Q. Now, let's talk about -- did you go to Houston again?

20 A. Yes, ma'am. It was either a week or two weeks later when
21 they had the job fair for the Houston -- well, it wasn't just
22 Houston. It was a hundred and fifty mile radius from Houston
23 of all of the schools.

24 Q. And what was the purpose of going to Houston the second
25 time?

Barry - Direct by Ms. Minick

1 A. To go to the job fair, put in my résumés to try and get a
2 job for the new school year season.

3 Q. Did you take the boys with you?

4 A. Yes, ma'am, I did.

5 Q. And for what purpose?

6 A. Just because Mark was working and I was going down and
7 didn't want to leave them with anybody else.

8 Q. And were they in school or were they out of school?

9 A. They were out of school.

10 Q. What did y'all do while you were in Houston?

11 A. We went this time -- or that time we took them to
12 Galveston, to the beach. We went to Kemah, to the amusement
13 park. We went to the park, because Mr. Noonan had bought them
14 kites. Went shopping, you know, things you normally do on
15 vacation.

16 Q. Do you know if you took any pictures or any pictures were
17 taken of those events?

18 A. Yes, ma'am, there were. We took pictures at Kemah, at
19 Galveston when we went down there.

20 Q. And what was the purpose of taking these pictures,
21 Mr. Barry?

22 A. Just family photos of, you know, events that, you know,
23 people do.

24 Q. And did the boys enjoy themselves during those times?

25 A. Oh, yes, they did.

Barry - Direct by Ms. Minick

1 Q. Were y'all naked at Craig's the whole time -- or, excuse
2 me, Mr. Noonan?

3 A. No, ma'am.

4 Q. Did you take pictures of the other events that you attended
5 clothed?

6 A. Yes, ma'am.

7 Q. Did the boys at any time express any concerns to you or
8 express any complaints while you were in Houston either time?

9 A. No, ma'am, not at all.

10 Q. Did they appear unusually -- well, if you will, tell the
11 Court their personalities during this time.

12 A. Both of them, very energetic, you know, typical 6 and
13 7-year-old boys -- or 5 and 6-year-old boys at the time, that,
14 you know, wanted to go and play. They wanted to do things. If
15 we were in the house, you know, they wanted to roughhouse or
16 wrestle or they wanted to watch a DVD or, you know, play with
17 the Wii.

18 Q. Would you characterize them as affectionate?

19 A. Oh, very affectionate.

20 Q. And what would they do in that regard?

21 A. I always said that my youngest one was very outgoing,
22 because strangers were friends that he hadn't met yet and they
23 would hang on them. They would hug people. But that didn't
24 start until after we started living a nudist lifestyle either.

25 Q. Once they were around friends, either Mr. Noonan or any

Barry - Direct by Ms. Minick

1 other friends or family that they came to know, were they
2 comfortable being close to them, sitting in their lap, holding
3 hands or --

4 A. Oh, yeah, they would, you know, they would sit in their
5 lap. They would try to climb on them. They would, you know,
6 wrestle with them. They would -- Mark had one friend that came
7 over quite a few times and he would grab -- they would grab his
8 hat and run with it. Like chase me, catch me, you know, try to
9 get your hat.

10 Q. Did Craig have -- excuse me. Did Mr. Noonan have a dog?

11 A. Yes, ma'am, he had a boxer.

12 Q. And what was the boxer's name?

13 A. Bozley.

14 Q. Did the boys enjoy playing with him?

15 A. Very much so.

16 Q. And do you know if they ever took pictures with -- of the
17 dog or with the dog that you know of?

18 A. I know there was a couple of them that when they were in
19 the backyard that -- in playing, that we would take pictures,
20 you know, in the backyard with the boys and the dogs.

21 Q. Mr. Barry, was there any sexual intent to any of the
22 pictures that you took?

23 A. No, ma'am.

24 Q. Okay. In fact, did you visit Houston on a third occasion?

25 A. Yes, ma'am. It was in December of that same year.

Barry - Direct by Ms. Minick

1 Q. Did you have a camera at that time?

2 A. Yes, ma'am.

3 Q. Did you -- when did you receive this camera?

4 A. My parents got it for me for Christmas.

5 Q. So it was essentially a new item that you had; is that
6 correct?

7 A. Yes, ma'am.

8 Q. Did you have a camera of your own at the prior visits to
9 Houston in June?

10 A. No, ma'am.

11 Q. Did you and Mr. Noonan ever discuss or plan to take
12 pictures of the boys naked?

13 A. No, ma'am.

14 Q. Did he ever ask your permission?

15 A. No, ma'am.

16 Q. Was there ever any agreement to take pictures or share them
17 amongst yourselves or other nudist friends?

18 A. No, ma'am.

19 Q. Did you ever see anyone with an erect or semi-erect penis
20 around yourself or the boys?

21 A. No, ma'am.

22 Q. Was there any sexual contact or conduct or sexual behavior
23 of any kind between you and the boys or between the boys and
24 Craig in Houston?

25 A. No, ma'am.

Barry - Direct by Ms. Minick

1 Q. So your boys are pretty active, I believe you testified; is
2 that correct?

3 A. Yes, ma'am, they are.

4 Q. Did Craig have a roommate?

5 A. Yes, ma'am, he did.

6 Q. What was his name?

7 A. His -- well, his real name is Jeff Spitler (phonetic), but
8 he went by the name of Freedom.

9 Q. And how often was he around while you were there?

10 A. He was always around the house when we were there unless he
11 was working. He was a nurse at M.D. Anderson.

12 Q. Did you and the boys practice nudism while -- is it
13 Mr. Spitler? Is that --

14 A. Yes, ma'am.

15 Q. Okay. You referred to him as Freedom?

16 A. Right, Freedom.

17 Q. Did you -- were y'all naked around him?

18 A. Yes, ma'am.

19 Q. Did you ever have any conversations in which he warned you
20 of anything?

21 A. No, ma'am.

22 Q. How did your boys feel about cameras or having their
23 picture taken?

24 A. They were little hams when it came to taking pictures.

25 Especially my youngest one, he would come up with that cheesy

Barry - Direct by Ms. Minick

1 smile that, you know, kids like to do, you know, or he would --
2 he would say something that would make him look like he was
3 smiling or he would make a face at the camera.

4 Q. Did you ever meet any other friends of Mr. Noonan's?

5 A. Well, his coworkers. The girl that he was dating, she
6 would come over to the house as well.

7 Q. Were you naked around her?

8 A. No, ma'am.

9 Q. Why's that?

10 A. Because she wasn't a practicing nudist.

11 Q. And did you ever have an opportunity to talk to her at all?

12 A. Yes, ma'am.

13 Q. Did you ever have a conversation in which she warned you
14 about anything regarding Mr. Noonan?

15 A. No, ma'am.

16 Q. Did you ever give Mr. Noonan permission to show anyone any
17 pictures that he may have taken?

18 A. No, because I didn't know there were any taken.

19 Q. Mr. Barry, did your -- I believe you testified that you had
20 your computer in Houston with you at all times. Did it have a
21 password on it?

22 A. No, ma'am.

23 Q. I mean, could anyone just open up the computer and access
24 anything in the computer?

25 A. Yes, ma'am.

Barry - Direct by Ms. Minick

1 Q. Did it have a USB port?

2 A. It had -- I believe that model had four USB ports, yes,
3 ma'am.

4 Q. Did it have a port where you could insert SD cards or
5 anything like that?

6 A. Yes, ma'am.

7 Q. Did it have a disk drive?

8 A. Yes, ma'am.

9 Q. Did -- and those things would have been accessible as well?

10 A. That's correct.

11 Q. Did you have any kind of passwords on your computer at all?

12 A. No, ma'am.

13 Q. Why not?

14 A. Because I was the only one using the computer, that
15 particular computer. The boys had their own laptop at home.
16 So I didn't see a need to have it.

17 Q. Mr. Barry, either during the time that the search warrant
18 was executed or during the time of the CPS trial or even during
19 this trial itself, have you come to learn that there were
20 pictures on your computer of the boys naked?

21 A. Yes, ma'am.

22 Q. And how did you feel when you learned that?

23 A. The first time I saw it, I was shocked and as I said when
24 the gentleman showed me that they were there, I said, "Where
25 did those come from?" And he said, "They're on your computer."

Barry - Direct by Ms. Minick

1 And I asked the question, "Where?" And he never responded. He
2 just said, "They're on your computer."

3 Q. So if there were photographs, specifically I believe -- and
4 you were watching the testimony yesterday, specifically 4G or
5 4V or 4W that I just showed you -- Mr. Barry, I'm showing you
6 what's been marked as Government's Exhibit 4G. Do you
7 recognize that picture or do you recognize the people in the
8 picture?

9 A. Yes, ma'am, I recognize the people.

10 Q. Have you ever seen that picture -- were you present when
11 that picture was taken?

12 A. Well, I was probably in the house but not in the room. I
13 did not know the picture was being taken.

14 Q. Do you know who took the picture?

15 A. I have no idea.

16 Q. Did you know that this picture was on your computer?

17 A. No, ma'am, I did not.

18 Q. If this picture -- there was testimony that this picture
19 appeared or was created June 1st, 2010, do you know how it got
20 there?

21 A. No, ma'am, I don't.

22 Q. Would it surprise you that it had been placed on your
23 computer in June?

24 A. It would have surprised me at the time, yes, ma'am.

25 Q. Did you ever have an opportunity or have any reason to look

Barry - Direct by Ms. Minick

1 for this picture?

2 A. No, ma'am.

3 Q. And why is that?

4 A. I didn't know there were naked pics taken of the boys.

5 *THE COURT:* Did you just say you didn't know that
6 there were any naked pictures taken of the boys?

7 *THE WITNESS:* Those pictures, no, ma'am, not of those.

8 *THE COURT:* These particular images?

9 *THE WITNESS:* Yes, ma'am, that's correct.

10 *THE COURT:* I gather from your answer, that you're
11 not -- to the question I just asked, that you -- well, are you
12 saying that you didn't know there were any naked pictures?

13 *THE WITNESS:* Well, I knew the ones that we took with
14 the timer that was, like, with Craig and -- or Mr. Noonan and
15 myself and the boys, I knew of those. But I didn't know there
16 were ones that were specifically taken just of the boys at any
17 of the trips to Houston.

18 *THE COURT:* How about pictures of just the boys with
19 Mr. Noonan?

20 *THE WITNESS:* I had no idea on those.

21 *THE COURT:* None of them?

22 *THE WITNESS:* No, ma'am.

23 *THE COURT:* Are you saying that the only pictures that
24 you knew about of the boys at Mr. Noonan's with no clothes on
25 were pictures in which you and Mr. Noonan and both boys were

Barry - Direct by Ms. Minick

1 all in the picture?

2 *THE WITNESS:* That's correct, yes, ma'am.

3 *THE COURT:* Okay. Thank you.

4 *MS. MINICK:* Judge, if we may have just a short break
5 for a bathroom break, please.

6 *THE COURT:* Thank you very much. Yes, that's fine.

7 *MS. MINICK:* Thank you.

8 *THE COURT:* Ten minutes. Thank you.

9 *(Recess from 10:13 a.m. to 10:23 a.m.)*

10 *THE COURT:* Are you ready?

11 *MS. MINICK:* Yes, ma'am.

12 *THE COURT:* Go ahead and take the stand, please, sir.

13 *MS. MINICK:* May I proceed, Your Honor?

14 *THE COURT:* Yes, of course.

15 **DIRECT EXAMINATION CONTINUED**

16 BY MS. MINICK:

17 Q. Mr. Barry, at the time that you were in Houston, were the
18 boys up to speed developmentally in terms of being able to
19 communicate their wants and needs?

20 A. They were. They were, you know, making sentences at that
21 time.

22 Q. Had they ever had any -- or been provided any information
23 by anyone regarding good touch and bad touch?

24 A. Yes, ma'am. R.B. had already had the class that Patsy's
25 House provided at the schools in Wichita Falls about good

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1 touch, bad touch.

2 Q. And did they ever mention to you that anyone had ever
3 touched them in a way that made them feel uncomfortable?

4 A. No, ma'am.

5 Q. Do you believe if they had, would they have been able to
6 communicate that to you?

7 A. I believe so, yes.

8 Q. Do you believe if they had had any sort of bad touch or
9 sexual contact with Mr. Noonan or with anyone, would they have
10 communicated that to you?

11 A. Yes, they would have.

12 Q. Did the boys ever act scared or afraid to go to Houston?

13 A. No. They always looked forward to the trips.

14 Q. Did you tell Mr. Peterson about the second trip that you
15 took?

16 A. Yes, ma'am. I told him about the job fair down there, and
17 he told me to go.

18 Q. And approximately when was the job fair in relation to your
19 first trip?

20 A. A week or two weeks after the first trip, the initial trip.

21 Q. And did you take your computer with you on that visit?

22 A. Yes, ma'am, I did.

23 Q. Did you continue to talk to Mr. Noonan on the Internet
24 during those visits?

25 A. During those visits?

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1 Q. I mean, between those visits.

2 A. Oh, yes, ma'am.

3 Q. I misspoke. At that time did you ever notice, become aware
4 of, did he do anything that made you uncomfortable around him
5 or fail to trust him?

6 MS. ZACK: Objection. Asked and answered.

7 THE COURT: I'll allow it.

8 A. I'm sorry. Would you repeat that.

9 THE COURT: Because the question is now at this time.
10 It's a different time.

11 BY MS. MINICK:

12 Q. After the first trip, during the time that you continued
13 talking to him, did anything -- did you become aware of
14 anything that made you uncomfortable about Mr. Noonan?

15 A. Oh, no, ma'am.

16 Q. Did you actually go to the job fair?

17 A. Yes, ma'am, I did.

18 Q. Did you take the boys with you?

19 A. No, ma'am, I did not.

20 Q. Where were they?

21 A. They were with Mr. Noonan. He was -- had taken the boys up
22 to the park, along with the dog, to go fly kites, play frisbee.

23 Q. How do you know that's where he took them?

24 A. Because they left the same time I did and the park is right
25 near the house, so I saw them pull into the park area as I went

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1 on to where I was going.

2 Q. About how long were you gone? Do you know?

3 A. About 45 minutes to an hour.

4 Q. Do you know -- well, let me back up. What were the
5 sleeping arrangements during this trip -- or either trip?

6 A. What it was, is in -- there was only two bedrooms that were
7 actually usable. The third bedroom was full, his mother's
8 belongings. So Mr. Noonan said that he would put a mattress on
9 the floor for the boys and they could bring their sleeping bags
10 and that it was okay if I shared the bed with him or I could
11 sleep on the couch.

12 Q. Was there another bed available in the living area or den
13 during either the first or second trip to Houston?

14 A. No, ma'am.

15 Q. I believe there was a picture admitted yesterday. Did you
16 see a picture or hear testimony about an additional bed?

17 A. Oh, yes, ma'am, I did.

18 Q. And was that always present at the time?

19 A. No, ma'am.

20 Q. When did that appear?

21 A. That appeared or was there when we went down at
22 Christmastime.

23 Q. And what was the purpose of that bed?

24 A. His family came up from Louisiana and so all the males
25 stayed at Mr. Noonan's house and all the females stayed at his

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1 aunt's house.

2 Q. Mr. Barry, did you have an opportunity to -- or have you
3 had an opportunity in the past, either during the time of the
4 search warrant, during the time of the Wichita Falls, or during
5 this trial in particular see any pictures that you come to
6 learn were on your computer in regards to the boys and
7 Mr. Noonan's dog?

8 MS. ZACK: Objection. Leading.

9 THE COURT: Overruled.

10 A. Yes, ma'am, I did. I discovered there were quite a few of
11 them that were on my computer that I had no knowledge of.

12 BY MS. MINICK:

13 Q. And those were pictures with one or both children and the
14 dog?

15 A. That's correct.

16 Q. You don't know when those pictures were placed on your
17 computer; is that correct?

18 THE COURT: Okay. Now you are leading.

19 MS. MINICK: I realized, Judge, after it came out of
20 my mouth.

21 BY MS. MINICK:

22 Q. Do you know -- or tell the Court if you know when those
23 pictures were on your computer.

24 A. I have no idea when they were placed on my computer, no,
25 ma'am.

Barry - Direct by Ms. Minick

1 *MS. MINICK:* If Mr. Thompson could pull up Exhibit 4D,
2 admitted Government's 4D.

3 *THE COURT:* He can't pull up the exhibits, I don't
4 think. He can pull -- he can enable the Government to pull it
5 up for you.

6 *MS. MINICK:* Okay. I didn't know who -- she had
7 suggested Mr. Thompson was going to. Okay.

8 BY MS. MINICK:

9 Q. Can see that, Mr. Barry?

10 A. Yes, ma'am.

11 Q. When was the first time you recall seeing this photograph
12 or being aware of it?

13 A. During the CPS trial.

14 Q. Did you take this photograph?

15 A. No, ma'am, I did not.

16 Q. Did you know it was on your computer?

17 A. No, ma'am, I did not.

18 Q. Did you allow that photograph to be taken?

19 A. No, ma'am.

20 Q. Do you know specifically when it was taken?

21 A. I don't know which trip it was, no, ma'am, I sure don't.

22 Q. Where does that appear to be taken?

23 A. It appears to be taken in Mr. Noonan's bedroom.

24 *MS. MINICK:* And if you can pull up Exhibit 4T.

25 BY MS. MINICK:

Barry - Direct by Ms. Minick

1 Q. Who's that a picture of, Mr. Barry?

2 A. That's a picture of R.B. and Mr. Noonan's dog.

3 Q. Do you know who took that photograph?

4 A. I have no idea.

5 Q. Were you present when it was taken, or do you know where
6 you were at the time it was taken?

7 A. No, ma'am, because I don't know when it was taken.

8 Q. And did you allow it to be taken?

9 A. Never gave permission for it, no, ma'am.

10 Q. Do you know who took it?

11 A. No, ma'am.

12 Q. Did you know it was on your computer?

13 A. No, ma'am, I did not.

14 Q. If there was testimony that it was created on your computer
15 on June 13th, would that surprise you?

16 A. Yes, ma'am.

17 Q. Why is that?

18 A. Because I don't know how -- you know, I don't know who
19 would have put it on there, because I didn't put it on there.

20 Q. Was this picture taken with your camera?

21 A. Not with my camera, because I didn't have a camera at the
22 time.

23 Q. Do you know how this picture got on your computer?

24 A. No, ma'am, I don't.

25 *MS. MINICK:* Would you please pull up Exhibit 4U.

Barry - Direct by Ms. Minick

1 BY MS. MINICK:

2 Q. Can you see the picture, Mr. Barry?

3 A. Yes, ma'am.

4 Q. Do you know who took that picture?

5 A. No, ma'am, I sure don't.

6 Q. Do you know when it was taken?

7 A. No, ma'am, I sure don't.

8 Q. Do you know where you were when it was taken?

9 A. I may have been fixing breakfast or taking a shower, but I
10 was not in the room when this picture was taken.

11 Q. All right. So do you know -- is there anything in this
12 picture that indicates when it was taken?

13 A. No, ma'am.

14 Q. Is there anything about this picture that indicates to you
15 who took the picture?

16 A. No, ma'am.

17 Q. Would it surprise you that this picture was on your
18 computer?

19 A. Yes, ma'am.

20 Q. If it was created June 13th, do you know how it got there?

21 A. No, ma'am, I don't.

22 Q. Did you have your computer in Houston at that time?

23 A. Yes, ma'am, I did.

24 Q. Now, a couple of weeks -- you said a couple of weeks after
25 the first trip is when you went to visit on the second

Barry - Direct by Ms. Minick

1 occasion; is that correct?

2 A. That's correct.

3 Q. And that was in June of 2010?

4 A. That's correct.

5 *MS. MINICK:* Would you pull up 4C, please.

6 BY MS. MINICK:

7 Q. And I believe in the interest of time, I'm going to ask
8 that all the exhibits -- or as I ask that they be brought up,
9 Mr. Barry, would you please take a look at them.

10 A. Yes, ma'am.

11 Q. Okay. 4E, 4F, 4H --

12 A. Wait a minute.

13 Q. That was FF. We need 4F.

14 A. Oh, this is 4F. Okay.

15 Q. So the picture before that, did you know the people in that
16 photograph?

17 A. No.

18 Q. Had you ever seen that picture before?

19 A. No, ma'am.

20 Q. When was the first time you actually saw that picture?

21 *MS. MINICK:* Let's go back to 4FF, please.

22 A. You mean 4EE?

23 BY MS. MINICK:

24 Q. I'm sorry. 4EE.

25 A. The first time I saw that picture, I believe it was during

Barry - Direct by Ms. Minick

1 the CPS allowance of Mr. Jarvis and I when we had -- during the
2 CPS trial.

3 Q. Do you know those people?

4 A. No, ma'am, I don't.

5 Q. Did you -- did anyone ever send you that photograph that
6 you know of?

7 A. Not that I know of, no, ma'am.

8 Q. Did you ever ask for someone to send you that photograph?

9 A. No, ma'am.

10 Q. All right.

11 *MS. MINICK:* If you would please pull up 4H.

12 BY MS. MINICK:

13 Q. Now, the last few photographs that we looked at, Mr. Barry,
14 4C, 4E, 4F, and 4H, have you recognized the people in those
15 photographs?

16 A. Yes, ma'am.

17 Q. And do you know -- can you recognize the location of the
18 photographs?

19 A. Yes, ma'am.

20 Q. Do you know specifically when they were taken?

21 A. No, ma'am, I don't.

22 Q. Do you know who took them?

23 A. No, ma'am, I don't.

24 Q. Do you know how they got on your computer?

25 A. I have no idea.

Barry - Direct by Ms. Minick

1 Q. When did you first become aware of these photographs?

2 A. These here were ones that I saw on the interview that you
3 had done with Mr. Jarvis, yourself, Mr. Noonan, and his
4 attorney at Houston.

5 Q. Is that when we all met to review all of the photographs?

6 A. Yes, ma'am.

7 MS. MINICK: Four -- would you please pull up 4I.

8 BY MS. MINICK:

9 Q. Do you recognize the people in that photograph?

10 A. Yes, ma'am, I do.

11 Q. Do you know who took that photograph?

12 A. No, ma'am, I don't.

13 Q. Did you give permission for that photograph to be taken of
14 your son?

15 A. No, ma'am.

16 Q. Did you know that photograph was taken?

17 A. No, ma'am, I did not.

18 Q. Do you know how it got on your computer?

19 A. I do not.

20 MS. MINICK: Please pull up 4J.

21 BY MS. MINICK:

22 Q. A similar picture, Mr. Barry. Do you recognize the people
23 in that photograph?

24 A. Yes, ma'am, I do.

25 Q. Were you present when that photograph was taken?

Barry - Direct by Ms. Minick

1 A. Not in the room, no, ma'am.

2 Q. Do you know when it was taken?

3 A. No, ma'am.

4 Q. Did you give permission for that photograph to be taken?

5 A. No, ma'am.

6 Q. Do you happen to know or is there anything about this
7 photograph that you can look at and tell who took the picture?

8 A. Not at all.

9 MS. MINICK: Would you please pull up 4K. Would you
10 please pull up 4L. Would you please pull up 4M.

11 BY MS. MINICK:

12 Q. Did you have an opportunity to see each of those exhibits,
13 Mr. Barry?

14 A. Yes, ma'am, I did.

15 Q. Did you recognize the people in the pictures?

16 A. Yes, ma'am.

17 Q. Do you know when those pictures were taken?

18 A. No, ma'am, I sure don't.

19 Q. Were you present when they were taken?

20 A. No, ma'am.

21 Q. Do you know who took them?

22 A. No, ma'am, I don't.

23 Q. Do you know how they got on your computer?

24 A. No, ma'am, I don't.

25 Q. Would it surprise you to learn that, according to the

Barry - Direct by Ms. Minick

1 testimony, these were created on your computer June 18th, 2010?

2 A. Yes, ma'am, it would surprise me.

3 Q. So that would have been during or after potentially --
4 well, let me rephrase that.

5 June 18th, how would that relate to the time
6 frame when you were in Houston the second time?

7 A. I'm not sure if it was at the beginning of the trip down
8 there or towards the end of it, because I can't remember the
9 exact date of the job fair.

10 Q. So that would have been after you were there the second
11 time; is that correct?

12 A. That would have been during the second time, yes, ma'am.

13 Q. Did -- okay.

14 MS. MINICK: If you could please pull up 40. Would
15 you please pull up 4P and 4Q.

16 BY MS. MINICK:

17 Q. Were you present when any of those photographs were taken,
18 Mr. Barry?

19 A. No, ma'am.

20 Q. Do you know who took the photographs?

21 A. No, I don't.

22 Q. Did you give permission for any of these photographs to be
23 taken?

24 A. No, ma'am.

25 Q. Do you know what you were doing when these were taken?

Barry - Direct by Ms. Minick

1 A. No, because I don't know when they were taken.

2 MS. MINICK: Would you please pull up 4R and 4S.

3 Would you please pull up 4X.

4 MS. POUNCY: As in "x-ray"?

5 MS. MINICK: Yes, ma'am. And would you please pull up
6 4Z. And would you please pull up 4Y.

7 BY MS. MINICK:

8 Q. Did you have an opportunity to see each of those exhibits,
9 Mr. Barry?

10 A. Yes, ma'am.

11 Q. And did you recognize the people in those photographs?

12 A. Yes, ma'am, I do.

13 Q. Do you know when those photographs were taken?

14 A. No, ma'am, I don't.

15 Q. Did you take them?

16 A. No, ma'am, I did not.

17 Q. Did you allow them to be taken?

18 A. No, ma'am.

19 Q. Do you know how they got on your computer?

20 A. No, ma'am, I sure don't.

21 Q. When is the first time that you became aware that they were
22 on your computer?

23 A. Some of these I saw during the CPS trial. Others I saw for
24 the first time when we had the interview down here.

25 Q. Did you see -- was there -- or you referred to seeing some

Barry - Direct by Ms. Minick

1 of the photographs for the first time in a meeting with
2 Mr. Jarvis, myself, Mr. Noonan, his lawyer Mr. Eastepp, where I
3 believe Mr. Chappell was present in the beginning and had set
4 it up for us. You said you saw some of the photographs for the
5 first time at this point; is that correct?

6 A. That's correct.

7 Q. Did you also have a similar meeting to view photographs
8 prior to the CPS trial in Wichita Falls?

9 A. Yes, with Mr. Jarvis, Ms. Versel Rush and I believe
10 Grace -- and I won't tell you what her last name is, because
11 she's got an Indian name and it's one of those, but yes.

12 Q. Did you see photographs during that meeting that you had
13 never seen before?

14 A. Yes, ma'am.

15 Q. Did the boys seem comfortable with the sleeping
16 arrangements there at Craig's house?

17 A. Yes, ma'am.

18 Q. Did they ever express anything to you about being
19 uncomfortable or anything that made them feel bad?

20 A. No, ma'am.

21 Q. Were you still active in their schooling at this time,
22 Mr. Barry, the year preceding the trips, the school year?

23 A. Well, in the school year, yes, but this was during the
24 summer. They were out of school.

25 Q. Okay. But did you ever have any schoolteachers, school

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1 counselors that reported to you about any concerns the boys
2 may --

3 A. Oh, no, ma'am, not at all.

4 Q. Did you communicate with the teachers often?

5 A. Yes, ma'am.

6 Q. Did you at any point discover these photographs that have
7 been shown to you -- the multiple photographs in Exhibit 4, did
8 you ever discover them on your computer at any time?

9 A. No, because I had no reason to look for them.

10 Q. Do you know what creation dates are as far as files go?

11 A. Creation dates are normally when a file is placed --

12 *MS. ZACK:* Objection. Nonresponsive.

13 *MR. JARVIS:* Your Honor, may I ask that counsel direct
14 her objection to the Court as opposed to myself. She continues
15 to look over here.

16 *THE COURT:* You know what, it's a bench trial.

17 *MS. MINICK:* Well, I appreciate that, Judge.

18 *THE COURT:* I think we can relax a little. All right?
19 Would you please reask the question.

20 And, again, sir, listen carefully and answer just
21 the question. If your lawyer wants a follow-up, she'll ask the
22 follow-up.

23 *THE WITNESS:* Yes, ma'am.

24 *THE COURT:* Go ahead.

25 BY MS. MINICK:

Barry - Direct by Ms. Minick

1 Q. Do you know what a creation date is?

2 A. Oh, yes, ma'am.

3 Q. And do you know what an access date is --

4 A. Yes, ma'am.

5 Q. -- on a file?

6 A. Yes, ma'am.

7 Q. And explain the difference between a creation date and an
8 access date.

9 MS. ZACK: Your Honor, I'm going to object. This
10 witness has not been qualified as an expert and there's no --

11 THE COURT: Are you asking him for his understanding
12 of the difference?

13 MS. MINICK: Yes, Your Honor.

14 THE COURT: He can give that, and that's all he can
15 give.

16 A. Yes, ma'am. A creation date is when a file is either first
17 created on the computer as opposed to an access date being when
18 it might have been accessed by any program on the computer as
19 Instant Messenger or backups, things like that of when it's
20 actually accessed.

21 BY MS. MINICK:

22 Q. So if you -- when you were using your files or online
23 applications, did you save them on your computer?

24 A. What do you mean "online"?

25 Q. Would you have used it -- would you have saved anything on

Barry - Direct by Ms. Minick

1 your computer -- any files, let's just put it that way?

2 A. Oh, yes, ma'am.

3 Q. Okay. And when you do that, did that -- are you aware of
4 whether that made a creation -- created a creation date?

5 A. Yes, ma'am.

6 MS. ZACK: Objection, Your Honor. Again, to the lack
7 of expertise.

8 THE COURT: It's just his understanding. You can
9 cross-examine him on the limits of that understanding and if
10 you need to recall your witness to rebut his lay understanding
11 of what your witness is an expert in, that's fine too.

12 BY MS. MINICK:

13 Q. Mr. Barry, what is your understanding of what happens -- or
14 when an access date changes?

15 A. Access date changes, from my training, is when somebody
16 opens the file to look at it or when it's accessed by another
17 program. And in this case because of going to school, I was
18 constantly doing backups on my system so that I didn't lose any
19 of my school information.

20 Q. Did -- if a creation date and an access date were the same,
21 would the -- I mean, does it make sense to you, if you were to
22 look at some of your files, that the access date was the same
23 as the date created, if it had never been accessed again?

24 A. That's correct, yes, ma'am.

25 Q. Have any of these pictures that you have had an opportunity

Barry - Direct by Ms. Minick

1 to review during this trial, did you notice any erect penises?

2 A. No, ma'am, there were none.

3 Q. Were there any pictures of any sexual contact?

4 A. No, ma'am, there were none.

5 Q. Have you ever taken any pictures of your children engaging
6 in any sorts of sexual conduct?

7 A. No, ma'am.

8 Q. Experiencing any sort of sexual contact?

9 A. None.

10 Q. Have you ever allowed any others to do that for the intent
11 to prepare or produce child pornography?

12 A. No, ma'am, not at all.

13 Q. In your mind -- well, did you take a variety of pictures,
14 Mr. Barry?

15 A. Oh, yes, ma'am.

16 Q. Of what?

17 A. Different things. I took a lot of pictures of my work that
18 I do with stained glass. I would take pictures of events
19 that -- like the first time the kids rode a bike or the first
20 time they roller skated, the first time they, you know, learned
21 how to paint their bedroom, yeah, a variety of things, family
22 vacations, Christmas, birthdays.

23 Q. Did you begin doing that for a particular purpose when you
24 first got them?

25 A. When -- well, one of the requirements of foster parenting

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1 is that when a child is placed in your home, you have to take
2 pictures of special events and create what they call a life
3 book. So if the children are ever returned to their biological
4 parents, the children can have their life book so their parents
5 can see what they did during that time frame.

6 Q. And did you do that?

7 A. Yes, ma'am, I did.

8 Q. Did you take that opportunity to continue that once you
9 adopted them?

10 A. Oh, yes, ma'am.

11 Q. Do you know if those were ever seized?

12 A. No, ma'am, they were not.

13 Q. Were those actual books that -- tell the Court what a life
14 book consisted of.

15 A. A life book is actually nothing more than a photo album,
16 slash, scrapbook of where you could put pictures in or you
17 could put, you know, drawings or, you know, the kids could
18 create a page in there and, you know, what they did that day,
19 just different things that goes on, so that it basically made a
20 record of their life from the time I got them until they were
21 taken away.

22 Q. So refer you -- asking you to think back to, you got the
23 Kodak camera when again?

24 A. In December.

25 Q. And did you take pictures of events and the boys with that

Barry - Direct by Ms. Minick

1 camera?

2 A. Yes, ma'am.

3 MS. MINICK: If I could ask Ms. -- is it Pouncy?

4 MS. POUNCY: Yes.

5 MS. MINICK: Ms. Pouncy to pull up Exhibit No. 20A,
6 please.

7 BY MS. MINICK:

8 Q. Exhibit 20A, Mr. Barry, do you recognize that?

9 A. Yes, ma'am.

10 Q. Do you know who took the picture?

11 A. I believe we had the timer set.

12 Q. And 20B, do you know who took that picture?

13 A. No, ma'am, I don't.

14 Q. Do you know how it was taken?

15 A. No, ma'am, I don't.

16 Q. Could that have been accidental?

17 A. Yeah, it could have been.

18 Q. Do -- but this was -- that would have been a picture on
19 your camera; is that correct?

20 A. I don't know if that was my camera or Mr. Noonan's.

21 Q. 20C and 20 -- well, 20C, do you recall who took that
22 picture?

23 A. Again, I believe that was taken with a timer.

24 Q. And that's a picture of you and Mr. Noonan, correct?

25 A. Yes, ma'am.

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1 Q. Do you know if the boys were in the room at that time?

2 A. I don't remember if they were in the room at that time or
3 not.

4 Q. But the boys are not pictured in this photograph, correct?

5 A. That's correct.

6 Q. And this picture was on your camera; is that correct?

7 A. I believe so, yes.

8 *THE COURT:* Do you recall the reason you took that
9 picture?

10 *THE WITNESS:* Yeah, I think it was just one that I
11 wanted for myself with Craig -- or Mr. Noonan and myself, just
12 because I didn't have one of us and I just took it. It wasn't
13 for anything other than just for me.

14 *THE COURT:* Did you ever show it to your partner?

15 *THE WITNESS:* No, ma'am.

16 *THE COURT:* Go ahead.

17 BY MS. MINICK:

18 Q. Mr. Barry, and this was located on your camera; is that
19 correct?

20 Did your camera have a timer as well?

21 A. Yes, ma'am.

22 *MS. MINICK:* 20D, please, Ms. Pouncy.

23 BY MS. MINICK:

24 Q. Do you recall seeing this photograph yesterday during Agent
25 Chappell's testimony, Mr. Barry?

Barry - Direct by Ms. Minick

1 A. Yes, ma'am.

2 Q. Do you recall him testifying that this was not child
3 pornography?

4 A. Yes, ma'am, I do.

5 Q. Do you recall this being taken on your camera?

6 A. Yes, ma'am.

7 Q. When was this taken?

8 A. This was during the New Year's eve party when we had come
9 down on the third trip to Houston.

10 Q. And how was that taken? Do you know?

11 A. I don't remember if that was taken with -- I believe it was
12 on a timer. I believe it was set up on his TV stand facing us.

13 *MS. MINICK:* Would you please pull up 20E.

14 BY MS. MINICK:

15 Q. When was this taken, Mr. Barry?

16 A. That was when we were painting the -- when we were painting
17 R.B.'s room.

18 Q. And do you recall when it was taken?

19 A. No, ma'am, I don't. I don't know if that was, you know,
20 February or March of -- no. Let's see, that would have been in
21 January of 2011. I'm sorry.

22 Q. Okay. So on the Kodak camera?

23 A. Correct.

24 Q. And who all was present when that was taken?

25 A. The boys and --

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1 Q. I'm sorry. Go ahead.

2 A. The boys and myself.

3 Q. And who took the picture?

4 A. I believe I did.

5 MS. MINICK: Would you pull up 20F, please.

6 BY MS. MINICK:

7 Q. And what does this depict, Mr. Barry?

8 A. This is both the boys painting R.B.'s wall.

9 Q. Was Mr. Noonan present?

10 A. No, ma'am.

11 Q. Where was this picture located?

12 A. In Mr. Peterson's and my house in Wichita Falls.

13 Q. Do you know if Mr. Peterson was present?

14 A. No, ma'am, he was at work.

15 MS. MINICK: 20G, please.

16 BY MS. MINICK:

17 Q. Is this another photograph in that series?

18 A. Yes, ma'am.

19 MS. MINICK: 20H, please.

20 BY MS. MINICK:

21 Q. And is this another photograph in that series?

22 A. Yes, ma'am.

23 Q. Do you know who took this photograph?

24 A. I'm not sure which one of the boys took it.

25 Q. And why did you take these pictures of this event?

Barry - Direct by Ms. Minick

1 A. Because it was the first time the boys learned how to
2 paint.

3 Q. Did they enjoy that event?

4 A. Yes, ma'am, they did.

5 Q. Whose room were you painting?

6 A. Well, we actually painted R.B.'s room, the hallway, and then
7 O.B.'s room.

8 Q. Did they get to pick out the colors?

9 A. Yes, ma'am, they did. I took them to the store and let
10 them pick it out.

11 Q. Did you ever have an opportunity to place any of these
12 photographs on your computer?

13 A. No, ma'am.

14 MS. MINICK: 20I, please.

15 BY MS. MINICK:

16 Q. Do you know when that was taken, Mr. Barry?

17 A. Not offhand I don't know which trip that would have been to
18 Houston.

19 Q. Okay. Was this on your Kodak camera?

20 A. It may have been.

21 Q. And when did you receive the camera?

22 A. In December.

23 Q. So would you agree with me it has to be after that?

24 A. Yes, it would have been on the New Year's trip.

25 MS. MINICK: 20J.

Barry - Direct by Ms. Minick

1 BY MS. MINICK:

2 Q. Where was that picture taken, Mr. Barry?

3 A. In Wichita Falls.

4 Q. Do you know who took it?

5 A. I believe I did.

6 Q. And when was that? At what time of year was that taken?

7 A. I believe it was -- I'm trying to remember. I believe it
8 was early fall -- no, it wouldn't have been. It would have
9 been January. It would have been after Christmas. We had just
10 taken down the Christmas tree.

11 Q. Okay. And 20K?

12 A. That was actually at Christmastime.

13 Q. Okay. I'm going to ask her to pull up several in the
14 interest of time for you to look at and then I'll ask you some
15 questions, if that's all right?

16 A. Sure.

17 *MS. MINICK:* 20L, 20M, 20N, 20O, 20P, 20Q, 20R, 20S.

18 BY MS. MINICK:

19 Q. Have you had a chance to see all of those that they've I
20 just requested, Mr. Barry?

21 A. Yes, ma'am.

22 Q. And do you know who took those photographs?

23 A. I did.

24 Q. When were they taken?

25 A. They were taken at Christmastime that year.

Barry - Direct by Ms. Minick

1 Q. And you're not naked then?

2 A. No, ma'am.

3 Q. Why not?

4 A. Just weren't. It was Christmas.

5 Q. Was anyone else present?

6 A. My niece and my sister were.

7 Q. And why didn't you practice nudism in front of them?

8 A. Because they weren't practicing nudists, and it was not
9 something that I did in front of them.

10 THE COURT: Did you share with them the fact that you
11 and the boys were practicing nudists?

12 THE WITNESS: No, ma'am.

13 THE COURT: When you traveled to Houston, did you
14 share with your partner what you and Mr. Noonan and the boys,
15 how you spent your time in Houston, specifically that you were
16 practicing nudist behavior with Mr. Noonan --

17 THE WITNESS: Yes, ma'am.

18 THE COURT: -- and the boys?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: You just didn't show him the pictures?

21 THE WITNESS: Yeah, we just didn't show him pictures.

22 THE COURT: All right. Thank you.

23 BY MS. MINICK:

24 Q. Did you have any pictures of the boys naked at the time to
25 show him?

Barry - Direct by Ms. Minick

1 A. No, ma'am.

2 Q. Did you have pictures of you and the boys and other adults
3 at the time?

4 A. Well, yes, ma'am. We had pictures at Kemah, at Galveston.

5 Q. I'm talking about while nude.

6 A. Oh, no.

7 Q. Okay. When were the group pictures, so to speak, taken?

8 A. At -- which picture are you referring to?

9 Q. You and Mr. Noonan and the boys.

10 A. Well, that would have been at New Year's time, when we went
11 down in December.

12 Q. Did he ever see any pictures that you took of the boys
13 naked painting the wall, Mr. Peterson?

14 A. No, ma'am.

15 Q. Why not?

16 A. Just never did. He never saw any of the pictures of any of
17 the trips down to Houston, of any of the things that we did.

18 Q. But as the Judge asked you, you did tell him there was
19 nudity involved --

20 A. Yes, ma'am.

21 Q. -- or they practiced?

22 A. Yes, ma'am.

23 *MS. MINICK:* 20T, please.

24 *BY MS. MINICK:*

25 Q. Who took that picture, Mr. Barry?

Barry - Direct by Ms. Minick

1 A. I don't know.

2 Q. Why didn't you show Mr. Peterson any of the other pictures?
3 What was y'all's relationship at the time?

4 A. Very much estranged, I mean, to the point, like I said, we
5 weren't even talking and if it was, it was just passing
6 comments.

7 Q. Were you contemplating -- or what were you contemplating as
8 far as your relationship with Mr. Peterson?

9 A. I really thought that the relationship by Christmastime,
10 that it was about over with.

11 Q. Did that factor into your thought of getting a job in
12 Houston?

13 A. It did. I really wanted out of the situation completely.

14 Q. And let me draw your attention to -- may I have just a
15 second, Your Honor?

16 *THE COURT:* Yes, please.

17 BY MS. MINICK:

18 Q. Let me draw your attention to January of 2011. Did O.B.
19 have any medical issue at that point?

20 A. Yes, ma'am.

21 Q. What was that?

22 A. He developed -- it's called phimosis.

23 Q. And what is that?

24 A. Phimosis is where the foreskin on a penis does not expand
25 and it makes it very difficult to go to bathroom or retract the

Barry - Direct by Ms. Minick

1 foreskin over the gland.

2 Q. Based on your observing and caring for O.B., did he suffer
3 any pain as a result of that?

4 A. Yes, ma'am.

5 Q. A little or a lot?

6 A. A lot.

7 Q. How old was he at the time?

8 A. He would have been -- let's see, he would have been six.

9 Q. Who was the doctor?

10 A. His pediatrician was Dr. Johnson. The doctor that we were
11 referred to, Dr. Dowd, was the urologist that took care of him
12 for that issue.

13 Q. Did O.B. seem comfortable with either Dr. Johnson or
14 Dr. Dowd?

15 A. Oh, yes, ma'am.

16 Q. Did he ever complain in -- while being examined, did he
17 ever complain about anyone touching him inappropriately?

18 A. No, ma'am.

19 Q. Did this event seem to make a big impression on O.B.?

20 A. Oh, well, yeah. Well, he had to have circumcision surgery
21 and, you know, he had stitches and Band-Aids and I had to keep,
22 you know, ointment on it so the stitches wouldn't rip. So,
23 yeah, it was a traumatic experience for him.

24 Q. Now, did the doctor give you instructions regarding how to
25 care for it?

Barry - Direct by Ms. Minick

1 A. Yes, ma'am.

2 Q. Is this after the surgery?

3 A. Well, he actually gave them to me before the surgery, so I
4 knew what to expect after.

5 Q. And so he did -- he was circumcised?

6 A. Yes, ma'am.

7 Q. Did he -- did O.B -- or describe how O.B. handled that.

8 A. He didn't really like anybody touching him, even though I
9 had to put on ointment. And all it really was, was Vaseline
10 just to keep it moist so that the stitches wouldn't dry out.
11 And, of course, Vaseline doesn't really cause any pain. But if
12 I would try to put it on, he would go, "Ooh, it hurts. It
13 burns. It hurts. It burns," you know.

14 Q. Was there any kind of cream or medicated cream that you had
15 to put on as well?

16 A. No.

17 Q. Okay. When he would say, "It burns," what did you do?

18 A. Basically the same as you do on a cut, you know, you go
19 "woooo," you know, "Is that better," and I did the same thing.
20 I just, you know, blow and, "Is that better?"

21 Q. Did he have bandages on his penis?

22 A. Yes, ma'am.

23 Q. Did the bandages have to be changed?

24 A. Yes, ma'am, daily.

25 Q. Did -- are you the one that did that?

Barry - Direct by Ms. Minick

1 A. Yes, ma'am, I am.

2 Q. Was this per the doctor's instructions?

3 A. Yes, ma'am.

4 Q. How often did you have to do that?

5 A. I had to do it until the stitches were removed.

6 Q. Okay. And how often did you have to do it? Daily, several
7 times a day, once a week?

8 A. Well, I mean, we had to do it daily. And I normally did it
9 before they went to school. And then I had to check again when
10 he got home from school to see if they were dry or it was still
11 moist and if I had to put more on.

12 Q. Did O.B. have any trouble after the surgery?

13 A. No, ma'am.

14 Q. Did he have any trouble -- did it alleviate the problem
15 with the trouble urinating or --

16 A. It did, yes, ma'am.

17 Q. In fact, were you asked about that when the boys were
18 questioned the day of the search warrant? Were you asked about
19 him having any problems or did you relate to the detective
20 about his circumcision?

21 A. It wasn't until the investigation was over and the CPS
22 agent showed up and I told her that he needed to have the
23 Vaseline, because they were given to my sister and she said,
24 "For what?" And I explained to her; and she said, "Well,
25 what's phimosis?" And, of course, I explained.

Barry - Direct by Ms. Minick

1 Q. Did you explain it to Detective Jones?

2 A. No, ma'am. Not that I recall anyway.

3 Q. Did you ever have any concerns about R.B. for the same
4 problem?

5 A. Yes, ma'am. Because Dr. Dowd had told me that it was
6 typical, especially in Latino boys, and when the boys came back
7 home after the State had removed them and then returned them to
8 us in February of 2013, R.B. -- I was in the bedroom and R.B.
9 had come in and he had said that his private area hurt and so I
10 took his pants down partway to look and see if by chance he had
11 it as well.

12 Q. Did he voice complaints several times?

13 A. He did on a couple of different occasions, that it hurt.
14 And I could never see any sign that he was developing phimosis
15 or that it was tight like O.B.'s was.

16 Q. Were sexual assault charges or indecency with a child
17 charges ever filed on you by Wichita Falls?

18 A. I have no idea.

19 Q. Did they ever sleep with you on occasion?

20 A. Oh, yeah.

21 Q. How often?

22 A. That's hard to say. It was not constantly, but, you know,
23 every once in a while they would come in and say, you know,
24 "Can we sleep in here?" Yeah.

25 Q. Did they do that always or was there a particular time that

Barry - Direct by Ms. Minick

1 that became more regular?

2 A. No, they did it whenever they did. It didn't make a
3 difference if Mark and I were both in there or if it was just
4 me or even if it was just Mark.

5 Q. Well, they like -- as little kids do, like to sleep with
6 their parents?

7 A. Yes.

8 Q. Did they do that once they came back to you, when was it,
9 February of 2013?

10 A. Yes, ma'am, they did.

11 Q. Okay. I want to draw your -- let's go to February of 2011.
12 Do you recall what happened in particular during that time
13 frame?

14 A. As far as the -- well, the search warrant was done on
15 February 7th of 2011. I had just started working at the
16 hospital as a pharmacy tech and they came and got me from my
17 job and said that somebody had broke into the house. We went
18 back to the house and then the next thing I know I was being
19 pushed into the chair and immediately grilled about all this
20 information.

21 Q. Do you recall what police agencies were there at the time?

22 A. Homeland Security was there, the Wichita Falls Police
23 Department was there. I believe ICE was there as well.

24 Q. And do you know what they were looking for?

25 A. I believe they were looking for anything that was connected

Barry - Direct by Ms. Minick

1 to child pornography.

2 Q. Were you cooperative?

3 A. Yes, ma'am.

4 Q. Did they search your home?

5 A. Yes, ma'am.

6 Q. Did they -- did you -- were you able to observe them doing
7 that?

8 A. They had pretty much done that by the time I had gotten
9 there.

10 Q. Did they have an opportunity to ask you questions?

11 A. Yes, ma'am.

12 Q. And did you answer them?

13 A. Yes, ma'am.

14 Q. Did you answer them honestly?

15 A. Yes, ma'am.

16 Q. Did you have a lawyer present during that time?

17 A. I had asked them that question, and they told me I didn't
18 need one at that time.

19 Q. Did you ever consult a lawyer before talking to the police
20 at that time?

21 A. No, ma'am.

22 Q. Did you ask them questions at your house?

23 A. Yes, ma'am.

24 Q. Who did you ask questions to, Mr. Barry?

25 A. To Detective Jesse Lara.

Barry - Direct by Ms. Minick

1 Q. Do you know why they thought you had child pornography?

2 MS. ZACK: Objection.

3 THE COURT: The question is, does he know why. That's
4 all the question asks.

5 A. At the time, no, ma'am, I did the not.

6 BY MS. MINICK:

7 Q. Did they tell what you they were looking for?

8 A. Yeah, eventually, yes, ma'am.

9 Q. Do you know if at they took anything from your house?

10 A. Yes, ma'am. They had to -- I had to sign a paper telling
11 what they took and that they took my laptop, my camera, and
12 about 26 videotapes.

13 Q. And what were those videotapes?

14 A. Vacations that Mark and I took before we got the boys to
15 Germany, the Bahamas, events at church.

16 Q. So, again, for documentation of your life events, things
17 like that?

18 A. Yeah, well, Mark and mine, yes.

19 Q. Did you ever talk to the police, any agency on another
20 occasion?

21 A. Yes, ma'am. Detective Jones had called me up and asked me
22 if I would mind coming down to the police station and answering
23 some questions to finish up his report.

24 Q. And do you know what he was investigating?

25 A. I believe he was trying to do a grand jury indictment in

Barry - Direct by Ms. Minick

1 Wichita Falls.

2 Q. Regarding what, if you know?

3 A. Child pornography.

4 Q. Did you speak to a lawyer prior to going down there?

5 A. No, ma'am.

6 Q. Did he ask you to go down there?

7 A. Yes, ma'am.

8 Q. And did you go willingly?

9 A. Yes, ma'am.

10 Q. Did you take a lawyer with you?

11 A. No, ma'am.

12 Q. And you didn't speak to anyone about anything prior to
13 going?

14 A. No, ma'am.

15 Q. Were you under arrest, Mr. Barry?

16 A. No, ma'am, I was not.

17 Q. How long were you there?

18 A. Approximately 45 minutes to an hour.

19 Q. Did you discuss with Detective Jones the pictures that they
20 said they found?

21 A. Yes, ma'am.

22 Q. And what did you tell him?

23 A. I told him basically what I told Detective Lara, that I did
24 not allow those pictures to be taken, did not know where they
25 came from, or how they even got on my computer.

Barry - Direct by Ms. Minick

1 Q. Did you tell the officer about O.B.'s circumcision?

2 A. Yes, ma'am, I did.

3 Q. Did you admit to knowing Craig Noonan, Mr. Noonan?

4 A. Yes, ma'am, I did.

5 Q. Did you admit to visiting him in Houston?

6 A. Yes, ma'am, I did.

7 Q. Did you admit to how you came to meet him?

8 A. Yes, ma'am, I did.

9 Q. Did he ask you about whether or not you knew he was a
10 registered sex offender?

11 A. Yes, he did.

12 Q. And what did you tell him?

13 A. I told him that I did not know that he was a registered sex
14 offender until they told me during the search warrant.

15 Q. Mr. Barry, did you ask him questions as well?

16 A. Yes, ma'am.

17 Q. Did he seem pretty open with you?

18 A. For the most part, yes.

19 Q. What did you ask him?

20 A. I asked him, because I was very unfamiliar with the legal
21 aspects of the law, that if he would keep me informed and kind
22 of be my anchor in there, because I knew nothing -- how
23 procedures worked.

24 Q. Okay. So let me get this straight. You go down there to
25 talk to a police officer investigating you and you ask them to

Barry - Direct by Ms. Minick

1 help you through the process?

2 *MS. ZACK:* Objection, Your Honor. Leading.

3 *THE COURT:* I'll sustain the objection.

4 BY MS. MINICK:

5 Q. Did you believe -- or why did you ask him to be your anchor
6 in law enforcement?

7 A. Because he was my first run-in with the law and my first
8 person that had ever -- first police officer that had ever
9 interrogated me in any way.

10 Q. And did you believe that he would do that?

11 A. Actually, yes.

12 Q. And why is that?

13 A. Because he was a police officer and their motto is to serve
14 and protect.

15 Q. All right. And for what purpose did you ask that question?

16 A. Because I was unfamiliar with what the procedures were and
17 I was trying to clear my name of being involved with the
18 production or distribution of child pornography.

19 Q. How did you feel about Mr. Noonan at that time?

20 A. I despised him.

21 Q. Why's that?

22 A. Because he -- he did things with my boys behind my back.
23 He violated and betrayed not only the boys but myself and our
24 friendship, what I thought was a friendship.

25 Q. Did you ask Detective Jones specifically about certain

Barry - Direct by Ms. Minick

1 things you could do regarding Mr. Noonan?

2 A. Yes, ma'am. Because I said if he tries to contact me or if
3 he shows up, what are my recourses. And he told me that he
4 could -- I could either call the police at that time or if I
5 wanted to, I could hire an attorney and file a restraining
6 order.

7 Q. And why were you asking that?

8 A. Because at that point I knew he was a registered sex
9 offender and I didn't want him trying to contact me or the
10 boys.

11 Q. What would you have done if Mr. Noonan had showed up at
12 your house?

13 *MS. ZACK:* Objection. Relevance.

14 *THE COURT:* I'll sustain the objection.

15 BY MS. MINICK:

16 Q. Did you tell the officer about going to a barbecue at
17 Mr. Noonan's friend's house in Houston, the Isaacksons?

18 A. Yes, ma'am, I did.

19 Q. And did you identify them for Detective Jones?

20 A. Yes, ma'am, I did.

21 Q. Did you allow him or another police officer to use your
22 online identity?

23 A. Actually I had given my online identity for True Nudists to
24 Detective Jones and Detective Lara.

25 Q. And what was the point of that?

Barry - Direct by Ms. Minick

1 A. They asked me if I would be willing -- if I would cooperate
2 with them to find out if the site was what I said it was and to
3 see if there were any other pedophiles or child pornography
4 going on and I told them I didn't have a problem with it and so
5 I gave them my screen name and my password.

6 Q. Did you do that willingly or did you have any reservations
7 about doing that?

8 A. No, I gave it to them willingly.

9 Q. Do you know whether the boys were questioned?

10 A. They had told me that they were being interviewed by a CPS
11 agent at Patsy's House.

12 Q. Was R.B. circumcised?

13 A. No, ma'am.

14 Q. Is there a particular way that a man or boy has to clean an
15 uncircumcised penis?

16 A. Yes, ma'am.

17 Q. What is that?

18 A. You have to retract the skin back behind the gland in order
19 to completely clean the foreskin inside and out, along with the
20 gland, and then let it go back over when you're done.

21 Q. Did you ever touch either the boys' penises in any way
22 other than for the purpose of cleaning it or applying
23 medication?

24 A. No, ma'am.

25 Q. Did R.B. ever complain of any similar symptoms to O.B.?

Barry - Direct by Ms. Minick

1 *MS. ZACK:* Objection. Asked and answered.

2 *THE COURT:* I'll sustain the objection.

3 BY *MS. MINICK:*

4 Q. Did you ever touch R.B. in a sexual manner, Mr. Barry?

5 A. No, ma'am, I did not.

6 Q. Did you ever touch R.B. with -- ever make R.B. touch your
7 penis?

8 A. No, ma'am.

9 Q. With his hand?

10 A. No, ma'am.

11 Q. Or your mouth?

12 A. No, ma'am.

13 Q. Do you remember when R.B. was initially questioned about
14 being touched in February and he said no one had touched him?

15 A. That's correct.

16 Q. Was that true?

17 A. Yes, ma'am.

18 Q. When were you arrested and incarcerated in the Federal
19 Detention Center?

20 A. In June of 2013.

21 Q. Did you have a chance prior to your incarceration to see
22 the videotape of R.B.?

23 A. No, ma'am.

24 Q. Was the first time you saw it in the courtroom yesterday?

25 A. Yes, ma'am.

Barry - Direct by Ms. Minick

1 Q. And do you -- did you hear the accusations that R.B. made?

2 A. Yes, ma'am, I did.

3 Q. And do you feel like -- well, let me back up. Did you hear
4 him say that you had touched his penis?

5 A. Yes, ma'am.

6 Q. And could you tell us, there was a time that you did touch
7 his penis, correct?

8 A. That's correct.

9 Q. And when was that?

10 A. When he had complained about it hurting and --

11 Q. And when specifically timewise was that, Mr. Barry?

12 A. Let's see, it was after -- I believe it was after spring
13 break. So it would have been the end of March, beginning of
14 April.

15 Q. And would this -- this would have been after they came back
16 to you from being -- the last time?

17 A. Yes, ma'am.

18 Q. In 2013?

19 A. That's correct.

20 Q. Okay. And did you -- how do you respond to those
21 allegations, Mr. Barry?

22 A. Knowing at the time when he had asked that and I had
23 previously told the Court that the medication that I was on had
24 caused the muscles in my body to deteriorate and so I was --

25 Q. No, no, I think you're misunderstanding what I was asking

Barry - Direct by Ms. Minick

1 you. How do you respond to --

2 A. Oh, I was shocked the way it was said.

3 *THE COURT:* Hang on. Let her finish your question, so
4 your answer is clear.

5 *THE WITNESS:* Oh, yes, ma'am.

6 BY MS. MINICK:

7 Q. In hearing R.B.'s testimony on the videotape, how do you
8 respond to those allegations?

9 A. Again, I was shocked, but I knew of the time frame that he
10 was talking about was when I had checked him, when he had
11 complained about it hurting.

12 Q. Okay. And so did you ever touch R.B. in a sexual manner?

13 A. No, ma'am.

14 Q. Mr. Barry, I want to draw your attention now -- you heard
15 testimony about chats that you had. Was that your primary way
16 to communicate with people that you met on True Nudist?

17 A. Yes, ma'am.

18 Q. Did you do that through Skype or Messenger or MSN or --

19 A. It mostly was done through MSN Messenger.

20 Q. And do you know if the chats that were referenced were in
21 total or portions of a conversation?

22 A. I believe those were just portions of conversations that I
23 had with individuals.

24 Q. So some of these things may have been taken out of context
25 or there are other pieces that could be explained, is that what

Barry - Direct by Ms. Minick

1 you're testifying to, Mr. Barry?

2 MS. ZACK: Objection. Leading.

3 THE COURT: I'll sustain the objection.

4 BY MS. MINICK:

5 Q. Mr. Barry, are there other portions, based on what you've
6 reviewed, of either before or after these conversations?

7 A. Yes, ma'am.

8 Q. Let's go to 7A, Government's Exhibit 7A. All right.

9 A. Okay.

10 Q. You were referring -- you were having a conversation with
11 Andrew. Do you recall that?

12 A. Yes, ma'am.

13 Q. And was Andrew somebody you knew personally?

14 A. Yes, ma'am.

15 Q. How did you know him?

16 A. I had met Andrew prior to him going -- leaving for Iraq and
17 we became good friends and then we conversed the whole time
18 that he was over in Iraq and after he got back and got
19 stationed stateside.

20 Q. Do you recall how y'all met?

21 A. I believe we -- yeah, I believe that was done on the True
22 Nudist site.

23 Q. Did you and Andrew actually discuss nudism?

24 A. Oh, yes, on many occasions.

25 Q. Did you discuss True -- did you discuss nudism in what's

Barry - Direct by Ms. Minick

1 marked as Government's Exhibit 7A?

2 A. Yes, ma'am.

3 *MS. MINICK:* May I approach, Your Honor?

4 *THE COURT:* You may. You need not ask permission.

5 *MS. MINICK:* Sorry.

6 *THE COURT:* That's all right.

7 *MS. MINICK:* Courts at home require it or at least
8 expect it.

9 BY MS. MINICK:

10 Q. Mr. Barry, I'm going to show you what's been marked as
11 Government's Exhibit No. A.

12 A. Yes, ma'am.

13 Q. Can you take a look at that?

14 A. Yes, ma'am.

15 Q. There's a comment by Andrew. "You have to be careful of
16 who you tell that you're a nudist"; is that correct?

17 A. Yes.

18 Q. And what was -- to what was he referring?

19 A. The normal response of society looking on nudism. A lot of
20 people in society would go, ooh, that's just nasty or gross or,
21 you know, we don't want to associate with you or you know.

22 Q. And he's the one that said that, correct?

23 A. Yes, ma'am.

24 Q. What were the circumstances -- his circumstances at the
25 time? Was he married? Is he homosexual or heterosexual? Do

Barry - Direct by Ms. Minick

1 you know?

2 A. He was married but going through a divorce.

3 Q. Okay. And was that a contentious divorce, if you know?

4 A. Only that they were contesting the custody of their child.

5 Q. Okay. And were y'all discussing that?

6 A. We were discussing that as well, yes, ma'am.

7 Q. Okay. Do you know if his wife also engaged in nudism?

8 A. She didn't practice it, but she didn't see anything with
9 Andrew doing it.

10 Q. Now, you state on line 196, "You have to be real careful."

11 A. Correct.

12 Q. And what are you referring to?

13 A. Well, just had to be real careful of who's around, because,
14 you know, if you're a practicing nudist and someone comes
15 around that is deviant, complications could arise.

16 Q. Okay. And you say in the next line, "Perverts out there
17 too"?

18 A. Correct.

19 Q. And how is it that you came to know that?

20 A. Well, I mean, that's typical of -- I mean, we've all
21 watched *Law and Order* and, you know, *SVU* and we've watched
22 things that, you know, you see those cases on TV all the time.
23 You hear about it on the news. And, you know, even locally we
24 heard about them, you know, in our area.

25 Q. And, Mr. Barry, given that fact, did you ever check out

Barry - Direct by Ms. Minick

1 Mr. Noonan?

2 A. No.

3 Q. Why not?

4 A. I didn't get any red flags from him. I didn't see -- no
5 more than I did Andrew. I didn't check him out either.

6 Q. What do you mean by your statement, "Can't get in trouble
7 for that if everyone is nude," and your next statement, line
8 199, "Can only get in trouble if you're the only one that does
9 and not the kids"?

10 A. There's a difference between being family nudists where
11 everybody is nude as opposed to if there's a bunch of kids
12 around and you're the only one that's naked, because that then
13 becomes the possibility of just being exhibitionists or what's
14 the other term, a flasher.

15 Q. Okay. So when you have testified earlier that you did not
16 practice nudism around your sister and niece or --

17 A. Right.

18 Q. -- did not practice nudism around Mr. Noonan's girlfriend,
19 did it relate to that, as far as respecting other people?

20 A. Yeah, yeah. You don't force your lifestyle on somebody
21 else.

22 Q. Okay. All right. Government's Exhibit 7B, did you --
23 that's a conversation with Quarteroy 2000 -- Quateroy5_2000.
24 Do you recall that person?

25 A. Not off the top of my head, no.

Barry - Direct by Ms. Minick

1 Q. Did you know him personally?

2 A. No.

3 Q. Do you recall how you met him or became engaged --

4 A. Most of the people on these I met through True Nudist.

5 Q. You make a comment, "My oldest is turning into a little
6 clown," line 8733, correct?

7 A. Okay.

8 Q. Do you recall making that comment? Would you like to see
9 it?

10 A. Yes, please.

11 Q. You don't have an independent recollection of that?

12 A. No, ma'am, I don't.

13 Q. Showing you what's been marked as Government's Exhibit 7B.

14 Do you see on there where you make the statement, "My oldest is
15 turning into a little clown"?

16 A. Uh-huh.

17 Q. "And really good with the camera, so he will want to take
18 everyone's picture"?

19 A. Yes, ma'am.

20 Q. To what are you referring?

21 A. Just he -- whenever we had any kind of an event, no matter
22 what it was, he always wanted to be the one taking pictures.
23 Whether it was, you know, Christmas or the barbecue in the
24 backyard -- in our backyard or, you know, he always wanted to
25 be the one taking the pictures.

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1 Q. And what do you mean by he's turning into a little clown?

2 A. Oh, well, he was beginning to come out of his shell at that
3 point. He wasn't as shy and reserved, and he would make jokes
4 with us. He was beginning to tell jokes. He would -- like
5 Mark and I always wore baseball caps and he would grab our caps
6 and want us to chase him, you know, and try and get it back.

7 Q. And what was the time frame of this chat in particular with
8 Quarteroy?

9 A. It would have been in December of 2010.

10 Q. And just for the record, could you spell Quarteroy?

11 A. Q-u-a-r-t-e-r-o-y 5.

12 Q. When you say, "Which is good. We'll have fun pictures to
13 share of the events or the evening, either one," to what are
14 you referring?

15 A. Anything that was -- you know, with our trip going to
16 Houston, because we had planned a Christmas dinner with his
17 family, because Craig's family was in town from Louisiana. We
18 also were going to go see Santa Claus at the mall, because he
19 was still there at that time. And we were also going to take
20 my two boys and his two nephews ice skating at -- I think it's
21 the Galleria Mall here in Houston.

22 Q. And was there anything sexually suggestive about that
23 comment?

24 A. No, ma'am.

25 Q. And the statement, "We'll have to encourage his interest in

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1 photography," did you make that or did Quarteroy?

2 A. I believe Quarteroy did.

3 Q. And did you respond to that statement?

4 A. Well, it shows no response after that.

5 Q. Okay. When you said, "You'll have pictures to share with
6 others," did you mean with other people at the event or to
7 share online?

8 A. Well, you know, it's sharing like -- because a lot of this
9 stuff I would show my sister, because she was more interested
10 in seeing the vacation pictures, because she had seen the ones
11 at Kemah. She saw the ones at Sea World and that and even at
12 the -- you know, when we came back, of the kids ice skating.

13 Q. Let me show you what's been marked as Government's Exhibit
14 7C, with Roxas13066.

15 A. Okay.

16 Q. Did you know him personally?

17 A. No, ma'am.

18 Q. Did you meet him on True Nudist, from what you recall?

19 A. Yes, ma'am.

20 Q. In that are you -- you make a reference to his surgery.
21 Whose surgery are you referring to?

22 A. O.B.'s.

23 Q. Do you recall sending a picture to Roxas?

24 A. No, ma'am, I don't.

25 Q. Did you ever send a picture that you know of that -- in

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1 which the children would have been naked to Roxas?

2 A. No, ma'am.

3 Q. And is this a complete conversation?

4 A. I don't believe it is, no.

5 Q. And why is that?

6 A. There's parts of it left out. I wouldn't have started the
7 conversation with talking about the boy's surgery. I would
8 have normally said, "Hey, how's it going? How was your day?"

9 Q. In fact, when the first line of the excised chat begins
10 6893, who makes the first comment?

11 A. Roxas does.

12 Q. And what is the comment?

13 A. "When does he have surgery?"

14 Q. So you would say that there's a portion of that prior to --
15 a conversation prior to that statement --

16 A. Probably.

17 Q. -- the initiation of the conversation?

18 A. Probably quite a bit before that.

19 MS. ZACK: Objection. Leading.

20 THE COURT: Refrain from leading, please. We're well
21 beyond background information.

22 BY MS. MINICK:

23 Q. When -- do you recall sending him a picture, clothed or
24 unclothed?

25 A. No, ma'am. But my Instant Messenger chat, they have a

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1 place where it shows your picture and their picture that's
2 connected to the chat that you're not sending. So my picture
3 was the Christmas picture that I took of the boys and myself at
4 JC Penny's.

5 Q. Okay. So like a profile picture --

6 A. Yeah. Yes, ma'am.

7 Q. -- is that what you're talking about? And are you familiar
8 with Facebook?

9 A. Yes, ma'am.

10 Q. Were you on Facebook?

11 A. Not at the time, no.

12 Q. Okay. Have you seen, though, the format of Facebook?

13 A. Correct.

14 Q. And there's a profile picture on that --

15 *MS. ZACK:* Objection. Relevance.

16 *THE COURT:* Overruled.

17 BY MS. MINICK:

18 Q. And there's a profile picture on Facebook as well, correct?

19 A. Correct.

20 Q. Was that similar to the kind of profile picture on True
21 Nudist?

22 A. On True Nudist?

23 Q. Yes. Or this chat?

24 A. Well, on the IM, well, that was MSN Messenger. So, yes,
25 that would have been the same type, yes.

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1 Q. Okay. I'm sorry. Then the profile picture was on MSN?

2 A. That's correct.

3 Q. Okay. And so when you're chatting with someone on MSN,
4 they can see that profile picture?

5 A. That's correct.

6 Q. Okay. And so, again, read me, within that context, line
7 6904.

8 A. It says, "The one who needs surgery is on the left of the
9 picture?"

10 Q. And that was a question by who?

11 A. By Roxas.

12 Q. Okay. And you said -- you respond?

13 A. "Yep."

14 Q. And he asks you -- or you ask him?

15 A. "Did you save the pic?"

16 Q. And to what are you referring to?

17 A. Well, the chat picture, you can save them on the -- you can
18 click on it and you do a save copy to it.

19 Q. Okay. And how did he respond?

20 A. He said, "No."

21 Q. Okay. And further down, in 6909?

22 A. It says, "Still had the window open." And on MSN -- let me
23 clarify that. On MSN there's a tab that you can click, which
24 is a specifics, where you can either have the profile pictures
25 on the display or you can close it and it can be off the

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1 display.

2 Q. Okay. Is that to what you were referring?

3 A. I believe it was.

4 Q. Now, when you say, "Yes, the little one is on the left," in
5 line 6912, "and as you can see, they love to be naked," to what
6 were you referring in that statement?

7 A. Well, we probably talked about it, but the one picture that
8 I -- or the picture that I had in chat, O.B. has a very
9 mischievous smile on his face, but I don't know the, you know,
10 the respond -- or I don't know in what reference I said that,
11 because like I said, the beginning part of the chat isn't
12 there, so I could have made comments to it before that.

13 Q. Okay.

14 *THE COURT:* When you get to a convenient breaking
15 point will you let me know and we'll break for lunch, please.

16 *MS. MINICK:* Certainly, Judge. It's really up to the
17 Court. I've got several more chats, so whatever is convenient
18 for you.

19 *THE COURT:* All right. Why don't we break now. We'll
20 resume at about 1:00.

21 *MS. ZACK:* Your Honor, may I inquire as to how late
22 you plan to go today?

23 *THE COURT:* Sure. I think today is -- it's got a few
24 interruptions, but it doesn't have a hard stop end. So right
25 now it looks like at 1:30 I've got a very brief hearing here.

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1 I do have a conference call at 2:00, which will take about half
2 an hour, and then another one at 4:30, yeah, 4:30, so -- and
3 then we can work -- which will only take a few minutes, I
4 think, at least I hope. So I'm not sure that answers your
5 question, but we'll be able to work as much as -- as long as
6 possible, I hope, as late as possible this evening. Is
7 there -- and I don't know if we're going to finish this witness
8 today or not, I just have no idea. I don't know how much
9 longer you have or how long your cross is going to be.

10 MS. ZACK: I don't know how long my cross is going to
11 be. I don't think it's going to take nearly as long as the
12 direct is taking, but I may have rebuttal testimony
13 potentially.

14 THE COURT: Which is fine. As I said, tomorrow
15 morning is free.

16 MS. ZACK: Okay. And do you think we'll be stopping
17 between 5:00 and 5:30?

18 THE COURT: I don't know.

19 MS. ZACK: Okay.

20 THE COURT: I don't know. I would hope so, but if we
21 have a reasonable prospect of finishing by working a little bit
22 longer, then we'll probably work a little bit longer, if that
23 makes sense.

24 MS. ZACK: Yes, Your Honor.

25 THE COURT: All right. Thank you.

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1 *(Lunch recess from 11:57 a.m. to 1:00 p.m.)*

2 *(Open court, Defendant present.)*

3 *THE COURT:* All right. Go ahead and take the stand
4 again, please, sir. Thank you. I think we're ready.

5 **DIRECT EXAMINATION CONTINUED**

6 BY MS. MINICK:

7 Q. All right. Mr. Barry, we were talking about the chats, the
8 portions that were excised from some of your chats, and I want
9 to refer your attention to Government's Exhibit 7D. Take a
10 look at that. Who is that a conversation with?

11 A. Michael Wright 540.

12 Q. And did you know him personally?

13 A. No, ma'am.

14 Q. In there what are you talking about?

15 A. We're talking about the trip event coming down to Houston
16 for New Year's.

17 Q. And is there a concern about your boys around men?

18 A. Yes, ma'am.

19 Q. And what do you say about that?

20 A. My response to his was, "That's okay. Between myself and
21 their uncle, they will be okay."

22 Q. And to whom are you referring when you refer to uncle?

23 A. Mr. Noonan.

24 Q. And you make a comment about other children. What was that
25 comment?

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1 A. The comment was, "Hope they do, so the boys can be naked
2 with other boys there."

3 Q. And what are you referring to in that?

4 A. One of the guests that was invited by Mr. Noonan had
5 children and they were going to be coming to the party along
6 with them.

7 Q. And why was that important to you?

8 A. Well, so the kids had other kids, you know, to spend the
9 evening with, because it would have been then just them and
10 adults.

11 Q. Okay. And was it important for them -- for those children
12 to be naked?

13 A. Not really, but the whole event was planned around a nudist
14 event.

15 Q. Let me draw your attention to what's been marked as
16 Government's Exhibit 7E. Who's that a conversation with?

17 A. Nudemac.

18 Q. And did you know Nudemac personally?

19 A. No, ma'am.

20 Q. Now, there's a reference to sending pictures. Is this a
21 complete conversation?

22 A. No, ma'am, it's not.

23 Q. And how do you know that?

24 A. Well, because the first thing is, "When he comes back, I'll
25 get a pic for you." And, again, that's not how you start a

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1 conversation. The conversation would have started with, "hi,
2 hi," you know.

3 Q. Do you know to what you were referring?

4 A. No, ma'am, I don't.

5 Q. Or to whom?

6 A. No, I don't.

7 Q. Okay. Was this -- where were you when this conversation
8 was had?

9 A. I believe I was in Houston at the time.

10 Q. Okay. So do you recall if the boys were there or if Craig
11 was there or do you recall the circumstances?

12 A. I believe the -- well, the boys would have been there for
13 sure, but I'm not sure if Craig would have been there at that
14 time or if he would have still been at work.

15 Q. Okay. Could you have been referring to him?

16 A. Yeah, I could have been.

17 Q. Okay. In the conversation you were told by Nudemac, "Be
18 careful about sending naked pictures of kids. You know it's
19 illegal." Do you recall that portion of the conversation?

20 A. I mean, I don't recall it, but obviously it was said. And
21 we could have been discussing just, you know, pictures.

22 Q. Did you send him a picture?

23 A. Not that I recall. I don't remember sending him a picture,
24 but if I did, it would have been a family photo. It wouldn't
25 have been -- I don't think it would have been a naked pic.

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1 Q. Okay. If it was -- would you send anything that you would
2 have considered child pornography?

3 A. Oh, no, ma'am, I wouldn't have sent any child pornography
4 across the net.

5 Q. Okay. Did you ever intentionally possess any child
6 pornography?

7 A. No, ma'am.

8 Q. Okay. You said -- Nudemac says, "I would hate for you to
9 get in trouble." And you say, "I know, not going to let that
10 happen." Do you recall that portion?

11 A. Not off the top of my head. But, again, you know, it's in
12 a conversation that came off my computer, so, you know, it
13 could have been my response, yes.

14 Q. And what were you referring to in what you knew was
15 illegal?

16 A. Well, anything that's constituted as child pornography or
17 in that line, you know, that you would send via electronic
18 devices is illegal.

19 Q. And were you doing that?

20 A. Absolutely not.

21 Q. Okay. And 7F, that conversation is with Berlioz 53. In
22 that, what are you and Berlioz talking about?

23 A. Oh, we were you discussing the trip that the boys and I
24 took to Houston over Christmas, slash, New Year's.

25 Q. And so when was this conversation -- when did this

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1 conversation occur?

2 A. This took place on January 5th, 2011.

3 Q. Did you tell him in that conversation about the New Year's
4 eve party?

5 A. I believe I did, yes.

6 Q. What other topics did you discuss?

7 A. We talked about the -- O.B.'s upcoming surgery. We also
8 talked about -- let's see.

9 Q. Did you talk to these people about other things besides
10 your children?

11 A. Oh, yes. I mean, with Berlioz, because I've had probably
12 quite a few conversations with him, we talked about my
13 schooling, playing the organ at church, because he is also a
14 keyboard player and a singer and he's -- actually has CDs out
15 that he did at the time.

16 Q. When you were at the New Year's eve party, did you watch
17 your boys closely?

18 A. Yes, I did.

19 Q. And why is that?

20 A. Well, just like any parent at that time, you know, you
21 watch what they're doing to make sure they're, you know, not in
22 trouble or getting into mischief or, you know, that they're
23 just okay.

24 Q. Okay. Now, referring your attention to 7G, Government's
25 Exhibit 7G, you begin talking about discussing with your boys

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1 sex, I believe. And he asks you, "Have they seen you hard?"
2 How did you respond to that?

3 A. Let me see. Response was -- well, let's see, because it
4 looks like that was repeated about five times.

5 *MS. ZACK:* Your Honor, I'm sorry to interrupt. But
6 could we ask that line numbers be given so we could follow
7 along?

8 *THE COURT:* That's fine. That would be helpful. Can
9 you do that, please?

10 *MS. MINICK:* Certainly.

11 BY MS. MINICK:

12 Q. At line 1787, "Have they seen you hard," that's by Berlioz;
13 is that correct?

14 A. That's correct.

15 Q. Okay. And can you find your response to that?

16 A. And my response is -- I don't see my response, because
17 everything is from Berlioz to me.

18 Q. So you don't --

19 A. You got it out of order.

20 Q. Well, let's move on for a second. Let me ask you about
21 line 1782. What are y'all talking about there?

22 A. Oh, he was asking me about having the talk with the boys
23 and wanted to know if I was prepared; and I said, "Yes, I am.
24 I want them to be comfortable and let them know that there's
25 nothing wrong with it and that they don't need to hide or feel

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1 guilty about it."

2 Q. All right. Now, going back to 1787 where Berlioz asks,
3 "Have they seen you hard," what is your response?

4 MS. ZACK: I'm sorry. What line?

5 MS. MINICK: The question, 1787, was, "Have they seen
6 you hard," and then I'm asking him to find his response.

7 MS. ZACK: Oh, okay.

8 A. Well, it's cut off on this one, but the last part is, "It
9 just happens to be a part of being male."

10 BY MS. MINICK:

11 Q. Okay. So had they seen you hard?

12 A. If they have, you know, it would have been a normal
13 response and they never really said anything about it and I
14 never, you know, said, "Hey, boys, look."

15 Q. So what did you mean by, "It just happens as part of being
16 male"?

17 A. Well, because, I mean, it does. Men, you know, will get
18 them, you know, periodically throughout a day.

19 Q. And so you weren't responding to that as meaning in any
20 sort of sexual circumstances?

21 A. No, that's not sexual, because it's probably when we're
22 doing the Wii -- I think we were talking about the Wii workout,
23 that, you know, with adrenal rush and blood rush, that, you
24 know, men do get them at that time.

25 Q. At 1795 in the same Exhibit 7G, you refer to your boys as

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1 well --

2 A. Yes.

3 Q. -- in talking about erections, and what do you say?

4 A. It says, "They get them. They're proud of them. They show
5 me when they get them. So I think they understand the
6 difference between the two."

7 Q. Okay. And what were you referring in that statement -- to
8 what were you referring?

9 A. Just that their bodies were beginning to change.

10 Q. Okay. And is that, in your opinion, based on raising them,
11 that was a natural thing that was occurring?

12 A. Absolutely, because that's what parents do.

13 Q. Okay. But is that -- as far as little boys starting to
14 become erect at different times, is that something that was
15 normal?

16 A. I don't know, because I never raised boys before. That was
17 just --

18 Q. For them?

19 A. Well, yeah, for them, yes.

20 Q. Okay. But it wasn't in response to any sort of stimulation
21 or sexual connotations or anything?

22 A. Oh, no, absolutely not.

23 Q. You also on 1798 make a comment about seeing them at a
24 resort. Could you tell us what that meant?

25 A. Well, we had --

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1 Q. Read the comment first, please, on 1798.

2 A. Okay. It said, "It's all good. Can't wait to see them in
3 a resort with other kids their own age."

4 Q. Explain why you had a focus in that of having them around
5 other kids at a nudist family resort?

6 A. One of the things that I had read in the research I had
7 done was that as kids interact with other kids their age or
8 close to their own age, that they begin to accept not just
9 their own body but others to where they don't -- they're
10 confident. They have that confidence. They have that
11 leadership. They have that nothing -- I don't know how I'm
12 trying to say it. That they don't put stigmas on other people,
13 as society does today.

14 Q. Now, let me refer your attention to Government's Exhibit
15 7I. There's a comment on line 2133, "These two have seen
16 nudity so much they don't even care anymore"?

17 A. Because we had been -- you know, we had been to
18 Mr. Noonan's house. We had been naked at home. You know,
19 they've seen it. They've seen, you know, Mr. Noonan. They've
20 seen myself. They've seen Mark. They've seen themselves, that
21 it was becoming second -- you know, almost first nature to
22 them, that they didn't even care that they were naked or saw
23 anybody else naked.

24 Q. And they also had seen other friends; is that correct?

25 A. That's correct.

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1 Q. "And they talk to friends of mine naked all the time on the
2 camera and they are naked like us," what does that mean?

3 A. Well, it means that when, you know, you're having
4 conversations with somebody, I would know that, the boys
5 wouldn't know that, that, you know, we would -- said, you know,
6 are you naked? Yeah, yeah. Yeah, we're naked. You know, what
7 are y'all doing? Again, that's not the whole conversation. So
8 I don't know what was said prior to that or even after that, or
9 we could have been discussing, you know -- and that's with
10 unknown?

11 Q. That's with -- yes.

12 A. Yeah, that's with unknown. So I could have been talking --
13 we could have been talking about a resort at that point. I
14 have no way of knowing unless I got the whole conversation.

15 Q. Now, referring your attention to 7J, do you know who that
16 was a conversation with? It's listed as the sender as unknown.
17 But you ask on 3717, "So you want to meet today?"

18 A. That may have been one of the gentleman that I met on True
19 Nudist that was at the Air Force Base in Wichita Falls.

20 Q. And do you recall his name?

21 A. Bryan.

22 Q. You say in line 30766, "Can't wait to see the three of you
23 naked."

24 A. Because I think that would have been the first time they
25 would have been with somebody other than Mr. Noonan. It would

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1 have been, you know, one of my friends. So that this would
2 have been the first time that they would have been naked with
3 somebody other than Mr. Noonan.

4 Q. And what about line 30768?

5 A. "Because they haven't seen a grown man uncut." I don't
6 know why -- why I say that.

7 Q. Do you know if Bryan or unknown in this conversation is
8 uncut?

9 A. No.

10 Q. Do you know -- and by "uncut," is it safe to assume you're
11 meaning uncircumcised?

12 A. Correct.

13 Q. Why would it -- would it be important for XXXXX to be
14 around someone else that had been circumcised?

15 A. Yes.

16 Q. And why's that?

17 A. To -- well, not so much O.B. as R.B., because if he was
18 uncut, R.B. would have been the only one that would have still
19 had it and he would have seen that it was -- you know, even
20 adult males are like that, so it's normal.

21 Q. Now, you talk about, "Make sure my camera is all charged
22 up." When did this conversation occur?

23 A. That conversation occurred 1-22 of 2011.

24 Q. And you stated that -- prior to that, that -- you say his
25 name, but we'll use R.B. in this proceeding. "R.B. will have

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1 you on the Wii though"?

2 A. Yeah, because any time anybody came in the house, R.B.
3 wanted to play a game on the Wii, because they had every kid's
4 game, you know, for it.

5 Q. When he says, "I would like to include everyone in one
6 picture and it can be clothed, I don't care," you said, "Sure."
7 You said, "Can have one clothed and naked, I don't care." What
8 in the heck did you mean by that, Mr. Barry?

9 A. It -- again, it's a nudist event and it would have been a
10 portrait-type thing. It wouldn't have been, you know,
11 developing child pornography. It would have just been, you
12 know, a group picture of us together.

13 Q. Because everyone there was naked?

14 A. Yeah.

15 Q. And did it occur to you -- I mean, did you think that might
16 not be a good idea?

17 A. At the time, no. Looking at it now, yeah, definitely.

18 Q. And your plans were to play Wii that day?

19 A. Yes.

20 Q. Okay. And --

21 A. And I believe we were going to --

22 Q. -- was your intent at the time to produce child pornography
23 that day?

24 A. No. I had no plans of producing child pornography.

25 Q. Well, I mean, the boys are naked, correct?

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1 A. Well, yeah, but we were nudists. We weren't child
2 pornographers.

3 Q. Was there anything sexual that occurred that day?

4 A. No, ma'am.

5 Q. Was there any sexual intent of those pictures?

6 A. No.

7 Q. You said, "I'm pretty cool with most stuff. Just ask if
8 you get a naked pic of the boys, you keep it private." Why is
9 that?

10 A. I didn't want it -- you know, if he did get one, I didn't
11 want it, you know, spread all over the Internet.

12 Q. So if he got a picture of all of y'all and he's in it --

13 A. Right.

14 Q. -- then that was fine, but you didn't want it to go any
15 further?

16 A. Right.

17 Q. Let's go to Government's Exhibit 7K. When was that
18 conversation had?

19 A. 1-24 of 2011.

20 Q. And what are you talking about in that exhibit?

21 A. Possibly going to either Wildwood or Lone Star.

22 Q. And what are those?

23 A. Those are family nudist resorts here in the state of Texas.

24 Q. Okay. So being a nudist, living the nudist lifestyle, is
25 visiting those resorts part of that?

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1 A. It doesn't have to be, but, yes.

2 Q. Okay. And why?

3 A. To socially interact with other nudist families.

4 Q. Is that the reason that you allowed other nudists to come
5 into your home as well?

6 A. Yes, ma'am. It's the only reason they would have been
7 there.

8 Q. Let's go to Government's Exhibit 7L. This is where you
9 have a conversation about something -- some story that you've
10 been told about a guy in Scotland. Do you recall that
11 conversation?

12 A. Not off the top of my head, no.

13 Q. Where did you get that story?

14 A. I don't even know.

15 Q. And why were you relating that story?

16 A. Again, I don't know.

17 Q. When -- once you tell that story, this unknown person that
18 you're speaking to asks you specifically, do you -- line 31437,
19 "Oh, you haven't seen that yet. Do your sons usually get that
20 hard when you're bathing them?" You say, "Sometimes." Unknown
21 says, "Do you incorporate that into massages too?" And what is
22 your response?

23 A. No.

24 Q. "And how come? Do you do full body massages?" What do you
25 respond on line -- it's kind of cut off?

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1 A. "No."

2 Q. I believe it's 31442. Your response?

3 A. "No."

4 Q. "Are you waiting until they're older," unknown says. What
5 do you say?

6 A. "Probably when they can talk about it and learn to enjoy
7 it."

8 Q. All right. So that -- are you talking about you doing
9 that?

10 A. As a massage, yes, or even a licensed massage therapist.

11 Q. But are you talking about touching them in any sort of
12 sexual way?

13 A. No, no. It was just talking about a body massage.

14 Q. Okay. But I'm talking about incorporating something else
15 into your massages?

16 A. No.

17 Q. He asks you, "Do you incorporate that," I believe in terms
18 of touching them.

19 A. Correct.

20 Q. And do you incorporate that into your massages?

21 A. No, I don't.

22 Q. On line 31452 in Government's Exhibit 7L, you say, "They
23 aren't interested in it yet. They just like being naked."
24 What are you referring to?

25 A. I think he was talking about -- or he was -- had brought up

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1 the question about sex. And, of course, at that age kids
2 aren't interested in sex. So I would have said, "No, they
3 aren't interested in that. They just like being naked."

4 Q. And was naked any sort of sexual reference?

5 A. No.

6 Q. Just --

7 A. Yes.

8 Q. -- the act of being unclothed?

9 A. Correct.

10 Q. You -- unknown says, "You and your buds have boners a good
11 bit?" You respond, "We do not, but not from anything sexual,
12 just being naked"?

13 A. Correct.

14 Q. So is that again what you were referring to just a little
15 while ago, about just in the course of a regular day?

16 A. Yes.

17 Q. He begins talking about some personal stuff of his, but
18 let's go to -- he starts telling you something, 31470, about an
19 experience he had with some other men and potentially their
20 boys; is that correct?

21 A. I don't know whether they did, but, yes, it could be.

22 Q. And you respond, "Good deal"?

23 A. And --

24 Q. Let me go on for just a second. You respond -- your
25 responses become quite short, "awesome," "of course," "right,"

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1 when he's telling you this. What are you doing at this time?

2 A. I could have been, you know, in the middle of another
3 conversation and just coming back and just, "yeah," "cool,"
4 "right," and not really paying attention to what he was even
5 saying on the conversation.

6 Q. You did say at one point, "Boys don't think real sexual at
7 that age"?

8 A. Yeah. And I may have responded to his. I may have seen
9 something in there and that's why I responded, "Boys don't
10 think sexual at that age," just hopefully maybe to get him off
11 the conversation.

12 Q. 7M, the Government's exhibit, so -- excuse me. Line 30396,
13 "So do you play with other guys in front of your sons? Do they
14 know you're gay," what did you say?

15 A. "No, they don't -- or, no, they don't get to see that.
16 Their minds aren't ready to think about sex between two
17 people."

18 Q. So, again, you're saying it's -- simply that the nudism was
19 not sexual?

20 A. Correct.

21 Q. He starts talking about -- the unknown starts talking about
22 he and his son were nudists and didn't mind showing off and
23 playing. Your response is?

24 MS. ZACK: I'm sorry. What line?

25 MS. MINICK: I'm sorry. 30399.

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1 MS. ZACK: Thank you.

2 BY MS. MINICK:

3 Q. And your response on 30400?

4 A. Was some, "Guys do that, but obviously I don't do that."

5 Q. Okay. And he responds, "Cool. To each his own"?

6 A. Correct.

7 Q. And you said, "Yippers." "You think you will when they are
8 older?" What is your response on 30405?

9 A. "Probably not."

10 Q. You say, 30407?

11 A. "They will have their own sex. Don't need to see mine."
12 And I was referring to when they get to the age of having
13 consensual sex with either a female or if they -- if they come
14 and tell me, "Daddy, I'm gay," you know, their boyfriend.

15 Q. And they don't need to see mine, is that --

16 A. They don't need to see me having sex with somebody else.

17 Q. And have they ever seen you have sex with someone else?

18 A. No, ma'am, not at all.

19 Q. He asks, "Cool. Are you going to teach them about J-O or
20 JO?" I believe you heard testimony that that was referring to
21 masturbation. And you said, "That I will do." What did you
22 mean by that, David -- excuse me, Mr. Barry?

23 A. Well, it's a parent's place to teach a child about sex.
24 It's a place for a parent to teach children about their bodies
25 and how they work when they hit that point.

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1 Q. Are you talking about how to actually --

2 A. No, no, not how to actually J-O, but discussing that their
3 bodies are going to be changing. They're going to go doing it.
4 They're going to have feelings. And one of them is -- with
5 every little boy is J-O. And you don't want them to feel
6 guilty about it.

7 Q. And that's what you were referring to at that time?

8 A. Correct.

9 Q. You were asked on line 30444 by unknown, "You naked now?"
10 Your answer, "Yes. We all are." Unknown says, "Nice."
11 Unknown says, "On cam?" You say, "Not on cam. I don't turn on
12 the cam." And it's kind of cut off. I'm assuming it's 30451
13 or 52. And then at the top it says, "I don't turn on the cam
14 home naked." Is that what that says?

15 A. Yeah, but I think there's part of it cut off, and I don't
16 know what the whole response would have been.

17 Q. And what do you say at 30454?

18 A. "I normally would if they weren't home."

19 Q. Unknown says, "Why don't you?" What do you respond at
20 30456?

21 A. "Too many ways for people to view cam without you knowing
22 it."

23 Q. And continuing on to 57?

24 A. "I don't want them on the Internet naked. Just a cautious
25 thing on my part, but don't care if people are here naked with

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1 them."

2 Q. At 30462, it appears as though he asks if they're -- "are
3 the kids behind you or on your lap?" And you say, "They're
4 next to me on the couch"; is that right?

5 A. Yes, ma'am.

6 Q. All right. And what do you say at 30464?

7 A. "But they can't see my laptop." Referring to that they
8 can't see the conversation that's going on, because they were
9 probably sitting there watching TV or playing Wii or whatever.
10 They were always next to me no matter what they were doing when
11 I was on the computer on the couch.

12 Q. So were they involved in that conversation?

13 A. No, ma'am.

14 *THE COURT:* Are you finished going through the chats?

15 *MS. MINICK:* I believe so, Your Honor.

16 *THE COURT:* All right. Well, I'm going to take up
17 this hearing and then I've got this 2:00 o'clock call. It
18 should be done by about 2:30. And I apologize for the
19 interruption. Go ahead.

20 *MS. ZACK:* Are we excused until then, Your Honor?

21 *THE COURT:* Yes, you are.

22 *MS. ZACK:* Thank you.

23 *(Recess from 1:45 p.m. to 2:30 p.m.)*

24 *(Open court, Defendant present.)*

25 *THE COURT:* All right. Are we ready?

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1 MS. ZACK: Yes, Your Honor.

2 MS. MINICK: Yes, Your Honor.

3 THE COURT: All right. Thank you. Mr. Barry. Go
4 ahead, please.

5 MS. MINICK: Thank you, Your Honor.

6 Ms. Pouncy, if you could please pull up Exhibit
7 No. 17N, please.

8 **DIRECT EXAMINATION CONTINUED**

9 BY MS. MINICK:

10 Q. Mr. Barry, I'm showing you what's been marked and admitted
11 as Government's 17N. Have you ever seen that photograph?

12 A. Not before this trial, no, ma'am.

13 Q. Okay. When did you first see this photograph?

14 A. At the original interview session that we had before this
15 trial, with you, Mr. Jarvis, Mr. Noonan and his attorney, and
16 myself.

17 Q. And did you hear the testimony that this was in located in
18 your Messenger cache?

19 A. Yes, ma'am.

20 Q. Was this picture located in a file in your computer that
21 you know of?

22 A. No, ma'am.

23 Q. And do you know how it got in your Messenger cache?

24 A. No, I do not.

25 Q. Do you have any thoughts as to how?

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1 A. A couple of possibilities. Number one is it could have
2 been when I was in Houston, with somebody else being on the
3 computer and using my chat.

4 The other possibility is, is that when you're
5 offline and somebody sends you messages or pictures, when you
6 log in to MSN, it comes up automatically showing that you had a
7 message while you were offline and it tells you at that point
8 whether that user is online or offline for you to respond or
9 just close out the message.

10 Q. And let me talk to you a little bit about that. You've had
11 some experience with computers, correct?

12 A. Yes, ma'am.

13 Q. Both in your schooling and your profession?

14 A. That is correct.

15 Q. And when did you first start working with computers?

16 A. 1976.

17 Q. So is it fair to say things have changed since then?

18 A. Quite a few generations have gone by, yes, ma'am.

19 Q. Okay. How large, in fact, was the computer that you first
20 started working on?

21 A. The first computer that I worked on was probably in a room
22 this size and it was only one computer mainframe, but it would
23 take that much space because it had to be air conditioning. It
24 had -- when we look at a hard drive now as one little bitty
25 thing, it took like eight or nine hard drives to run an

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1 operating system and they were the size of probably a portable
2 washing machine.

3 Q. Did you become familiar with Windows XP and Windows Vista?

4 A. Yes, ma'am.

5 Q. What about Windows 7?

6 A. Yes, ma'am.

7 Q. Is it your experience -- well, somewhat based on your
8 professional background, that Messenger or MSN has changed
9 since you first started using it?

10 A. It's changed dramatically from the beginning to what it is
11 now.

12 Q. How so?

13 A. Well, the original MSN would come across in telling -- and
14 people could just post messages and pics on there, whether or
15 not you accepted them. Then it got to the point where it said
16 you have a file coming across, do you want to accept it, which
17 is what it is now. Because people were sending files and
18 images that had viruses attached and it gave the operator ample
19 time to say whether or not they wanted to allow it.

20 Q. So have you actually been Microsoft certified?

21 A. Yes, ma'am, I am.

22 Q. In -- let me ask you this: You did not have this
23 picture -- or did you have this picture on your computer?

24 A. Not in a file, but they said it was on the Messenger, yes,
25 ma'am.

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1 Q. Okay. Did you ever attempt to send this photograph to
2 anyone?

3 A. No, ma'am.

4 Q. So it's your testimony that the first time you saw it was
5 back at a pretrial conference when we all met and Agent
6 Chappell allowed us to look at the pictures?

7 A. That is correct.

8 MS. MINICK: Ms. Pouncy, if you would please, pull up
9 17O. And would you please pull up 17P. Would you please pull
10 up 17Q, 17R, please. 17S and 17T.

11 BY MS. MINICK:

12 Q. Did you get a chance to see all of those exhibits,
13 Mr. Barry?

14 A. Yes, ma'am, I did.

15 Q. And you heard the testimony that those too were located in
16 your Messenger cache; is that correct?

17 A. Yes, ma'am.

18 Q. And when did you first see any of those photographs?

19 A. The first time, again, was at the pretrial conference that
20 we had with the three of us and Mr. Noonan and his attorney.

21 Q. When we met to view them on the computer with Agent
22 Chappell; is that right?

23 A. Yes, ma'am.

24 Q. And had you seen them prior to that day?

25 A. No, ma'am, I had not.

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1 Q. Do you know how they got in your Messenger cache?

2 A. No, I do not.

3 Q. Did you ever send them to anyone?

4 A. No, ma'am, I did not.

5 Q. Did you ever ask for them to be sent to you?

6 A. Absolutely not. Because I don't even know who these people
7 are.

8 Q. Now --

9 *THE COURT:* May I ask a question here?

10 *MS. MINICK:* Sure.

11 *THE COURT:* There was some testimony in the
12 Government's case in chief that the forensic evidence on the
13 computer -- your computer, was that these photographs had been
14 opened and accessed on your computer. I'm trying to square
15 what you have just described with that testimony.

16 What is your understanding about -- based on your
17 own experience with your computer, as to how you could have
18 been oblivious to the presence of these images on your laptop
19 or desktop but at the same time there is forensic evidence that
20 they were opened well before the inspector, the investigator
21 found them there?

22 *THE WITNESS:* If I'm not mistaken, and I can't
23 remember exactly what he said, but I believe he said that they
24 were in the Messenger cache, but he couldn't tell if they were
25 opened.

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1 *THE COURT:* No, that's not what I recall. He said
2 they had been accessed. They had been --

3 *THE WITNESS:* They had been accessed?

4 *THE COURT:* He could not tell when. He could not --
5 he could tell they hadn't been saved or -- and they may even
6 have been attempted to be deleted, but they had been opened.

7 *THE WITNESS:* Okay. But with MSN, I don't know -- I
8 don't remember the all old version, because it's been so long
9 since I've been on it. When you opened it up or when the
10 message came up, if it came up as opened in your -- in the
11 thing, because you would have had to open it up in a separate
12 window and you would have had to have saved it at that time,
13 because it would have said "saved to" as compared to just
14 opening it in a separate window.

15 So I would have had to -- if these came across in
16 MSN and I was going to view them, I would have had to save them
17 to a file on my computer first and then view them instead of
18 just being there on the MSN Messenger. That was the old MSN
19 before they changed it with Microsoft Vista and Microsoft 7.

20 *THE COURT:* And when was that change?

21 *THE WITNESS:* Let's see, Vista came out, I believe, in
22 2000 -- was it 2007? Either 2007 or 2008.

23 *THE COURT:* So I think we're talking about post 2007?

24 *THE WITNESS:* Right. And then it went from that
25 into -- but that was Windows Vista. That wasn't -- or MSN had

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1 changed some of it, but they didn't actually change
2 their format until they went from MSN Messenger to what they
3 call MSN Live, and MSN Live didn't happen until 2011.

4 *THE COURT:* So I'm not seeing the -- the point of the
5 timeline that you've just described, in terms of the answer to
6 the question I asked, is what?

7 *THE WITNESS:* That the old version of MSN was still
8 running even though it had changed to work on MS -- or work on
9 Windows Vista, but you didn't have the opportunity at that
10 point of just opening the picture up from MSN Messenger. You
11 actually had to save it to either a temporary file or to a file
12 on your computer and then open it up from that -- from that
13 spot to make a large picture like what you're seeing here.

14 *THE COURT:* And I understand you're telling me you
15 didn't do that.

16 *THE WITNESS:* That's correct.

17 *THE COURT:* But can you -- would opening it make a
18 large picture like the one we are seeing here or would opening
19 it display it in some other format but nonetheless provide
20 access to it?

21 *THE WITNESS:* It would have opened another window that
22 would have looked like this and made it full size, that's
23 correct.

24 *THE COURT:* So you would have seen it?

25 *THE WITNESS:* Yes, ma'am.

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1 *THE COURT:* And your testimony is you didn't do it?

2 *THE WITNESS:* That's correct.

3 *THE COURT:* Would it have been done automatically,
4 when you saw that you had a message there and did something to
5 see what that message was?

6 *THE WITNESS:* If when the window -- if they would have
7 sent the message to me while I was offline and I opened it up,
8 it could have, but I may have just closed all the windows
9 without ever viewing them, because there was a way to do that
10 just across the bottom with click.

11 *THE COURT:* If you're getting messages from people who
12 you are interested in chatting with or you've chatted with in
13 the past or you're interested in seeing what the message
14 content is, would you have automatic -- would you have routine
15 habits that you brought to your laptop, to just click open to
16 see what it said --

17 *THE WITNESS:* Yes, ma'am.

18 *THE COURT:* -- or described?

19 *THE WITNESS:* Yes, ma'am.

20 *THE COURT:* And that would have pulled up the picture?

21 *THE WITNESS:* No, not necessarily, not on that one.

22 It would open up the chat itself. The window may not --

23 *THE COURT:* It would have let you seen what the
24 picture was?

25 *THE WITNESS:* Correct.

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1 *THE COURT:* Okay. And that would also be consistent
2 with testimony that there was forensic evidence that at some
3 time that it had been opened?

4 *THE WITNESS:* That's correct.

5 *THE COURT:* All right. Okay. Thank you. That's
6 helpful.

7 BY MS. MINICK:

8 Q. Did you know, Mr. Barry, who this was from?

9 A. No, I had no idea.

10 Q. Let me ask you something else. If you -- did you routinely
11 leave your computer on at times?

12 A. Yeah. I never shut my computer off.

13 Q. So if you received a message earlier to chat and you don't
14 come across it for a while and you don't know who it's with,
15 would you necessarily open it up?

16 A. No, I would have closed it.

17 Q. All right. Would it tell you if they were still online or
18 still available to chat or what would it tell you?

19 A. Yes, ma'am, at the very bottom it would say user -- like in
20 Mr. Noonan's case, it would have said sunman75 is online or it
21 would have said offline. And it would have been in blue at the
22 bottom of the dialogue box.

23 Q. All right. So if you receive something while you're not
24 there and you later saw it and they were offline, would you
25 necessarily open it?

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1 A. No, I would have closed it.

2 Q. If you -- based on your workings and your experience with
3 your computer, if a picture is sent to you in -- and it goes
4 into the Messenger cache and it shows a creation date, in
5 particular on State's Exhibit 30 under 4AA, which is --

6 MS. MINICK: Could we go to 4AA, please?

7 MS. ZACK: 30 isn't part of what we prepared for
8 the -- that is what you had asked for in the middle of -- it's
9 not on the computer, because that is what you asked
10 Mr. Chappell to prepare in the middle of this trial.

11 MS. MINICK: Right, I'm not asking her -- I'm asking
12 her to go to Exhibit 4AA.

13 MS. ZACK: 4AA or 30?

14 MS. MINICK: No, 4AA.

15 MS. ZACK: Oh, okay. Because we don't have 30 in
16 there.

17 MS. MINICK: No, I didn't ask for that. I said
18 relating to --

19 MS. ZACK: Okay. Got it.

20 MS. MINICK: All right.

21 BY MS. MINICK:

22 Q. So this is 4AA. You heard testimony regarding the creation
23 dates entered into evidence as Government's Exhibit 30 about
24 this picture being created 11-20-2010 at 6:50:0 -- 6:00
25 o'clock -- 6:50 p.m. and 3 seconds?

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1 A. Right.

2 Q. And the access date 11-20-2010, 6:50 and 3 seconds. In
3 your experience, if it hit your cache, that would create the
4 create date, correct?

5 A. Yes, ma'am.

6 Q. And if you later accessed it, there would be a different
7 date or different time, would there not?

8 A. I believe so, yes.

9 Q. Now, you also heard testimony that the modification dates,
10 according to Agent Chappell, for some peculiar reason under
11 Windows Vista were to be ignored; is that right?

12 A. That's his testimony, yes.

13 Q. Is that your experience?

14 A. Not always. What I learned with Vista, depending on the
15 setup, whether or not you did a custom setup or whether you did
16 a normal setup, you could actually control what was put on by
17 the computer in those files and it would show up that way. So
18 anybody that had any experience would know in a custom setup
19 how to do that.

20 Q. Okay. And did -- if you -- let me ask you to take a look
21 at my copy of Government's Exhibit 30. If you would take a
22 look at the creation and the access dates for those Government
23 Exhibits 4AA, 4BB, 4CC, 4DD, 4EE, 4FF, that all correspond with
24 the ones I just asked you to take a look at that we pulled up
25 that were in the Messenger cache, looking at the creation dates

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1 and the access dates.

2 A. Okay. The creation --

3 Q. Just look at them all first.

4 A. Oh, okay.

5 Q. In any of those particular exhibits, do any of them have
6 different access dates compared to the creation dates?

7 A. No, ma'am, they're identical.

8 Q. So the creation date and time is identical to the access
9 date and time; is that correct?

10 A. That is correct.

11 Q. And this -- these exhibits, 4AA, 4BB, 4CC, 4DD, 4EE, and
12 4FF, correspond to those exhibits we pulled up, 17N through T
13 that you saw in the computer, is that correct, in comparing the
14 thumbnails on the Exhibit 30 to the ones you looked at just a
15 second ago; is that right?

16 A. That's correct.

17 Q. And just so I'm clear, you saw -- first saw those back a
18 couple months ago?

19 A. Yes, ma'am.

20 MS. MINICK: Ms. Pouncy, would you please pull up
21 Exhibit 9A.

22 BY MS. MINICK:

23 Q. Now, 9A, Mr. Barry, you had obviously seen that, correct?

24 A. Yes, ma'am.

25 Q. And you were aware it was taken?

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1 A. Yes.

2 MS. MINICK: Can we go to 9B?

3 BY MS. MINICK:

4 Q. Had you ever seen that picture before?

5 A. No, ma'am.

6 Q. When did you first see it?

7 A. During -- actually the first time I saw this one was when
8 we saw it the other day during Mr. Chappell's examination. I
9 had never seen it even in the pretrial.

10 Q. So you saw it yesterday or the day before?

11 A. That's correct.

12 Q. And 9B -- or, excuse me, 9C, 9D, 9E, 9F, 9G, 9H, 9I, had
13 you seen any of those pictures prior to yesterday or the day
14 before?

15 A. No, ma'am.

16 Q. And when you saw those pictures, how did you feel?

17 A. Again, I felt shocked, because I didn't know they were
18 taken and these are just more pictures that -- that Mr. Noonan
19 allowed to be with the boys without asking my permission, so I
20 was very unhappy.

21 Q. Let me refer your attention now, Mr. Barry, to the bathroom
22 pictures, the picture of one of the boys in the bubble bath or
23 with Mr. Noonan in the bathroom. Were you aware of those
24 pictures being taken?

25 A. Not at all, no, ma'am.

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1 Q. Were you aware -- or did you allow Mr. Noonan to take those
2 pictures?

3 A. Absolutely not.

4 Q. Do you know when they were taken?

5 A. I have no idea.

6 Q. Do you have any idea where you were when those pictures
7 were taken?

8 A. I could have been in the living room working on my master's
9 or I could have been in the kitchening cooking dinner. I don't
10 know.

11 Q. The picture of the child in the tub -- one of the children
12 in the tub with the bubble bath -- with the bubbles on his face
13 and he's with his feet up on the side, was that an unnatural
14 pose for your boys?

15 A. No, not for him. Because they always had toys in the
16 bathtub. So he was in and out, in and out constantly.

17 Q. Okay. And was that -- if you first looked at that, would
18 that strike you as posed or would it strike you as just
19 something normal that one of the children would do because they
20 were active little boys?

21 A. That would have been more of natural, because again, you
22 know, they were like little monkeys. They were in and out.
23 You know, they wouldn't just get in the bathtub and sit. I
24 constantly had to go in and check on them because they were in
25 the bathtub, out of the bathtub, going to get toys, back in the

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1 bathtub, and, you know, they were tracking water all throughout
2 the house. So, no, that wasn't unnatural for them.

3 Q. And did you view that -- or were you present when that was
4 taken?

5 A. No, ma'am, I wasn't.

6 Q. Did you allow it to be taken?

7 A. Not at all.

8 Q. Did it strike you when you saw it as pornographic?

9 A. No, ma'am, it did not.

10 Q. All right. But, again, it would not have been something
11 that you would have allowed him to take; is that right?

12 A. Oh, I wouldn't have allowed it, no.

13 Q. You took many photos in addition to the events in Houston
14 at the barbecue or other events, I guess. Let me ask you to
15 take a look at what's been marked as Defense Exhibits 14, 15,
16 16, 17, and 18. Tell me if you recognize those photographs.

17 A. Yes, ma'am, I do.

18 Q. And do you know who took these photographs?

19 A. I did.

20 Q. All of them?

21 A. Yes, ma'am.

22 Q. And what camera would you have taken those on?

23 A. The Kodak.

24 Q. Did you take a lot of pictures like these as well?

25 A. Yes, I did.

Barry - Direct by Ms. Minick

1 Q. And is this just a representative of the kind of pictures
2 you were taking --

3 A. Yes.

4 Q. -- during that time after you got the camera at Christmas?

5 A. Correct.

6 MS. MINICK: Your Honor, at this time I would tender
7 them -- offer Defendant's Exhibits 14 through 18 and tender
8 them to defense counsel for inspection.

9 THE COURT: Any objection?

10 MS. ZACK: No, none whatsoever.

11 THE COURT: All right. They're admitted. Thank you.
12 14 through 18?

13 MS. MINICK: Yes, ma'am.

14 THE COURT: Thank you.

15 BY MS. MINICK:

16 Q. What were those pictures of, Mr. Barry?

17 A. The first picture, 14, was taken at the zoo. The next
18 pictures were taken at a place called Lucy Park Nature Bend, in
19 a nature area. And what they did at Christmastime, they had a
20 pathway that the families could take kids through, and they had
21 different lights depicting the wild animals for Christmastime.
22 And then the last one was just a self-portrait of the boys and
23 myself in our living room, and I used the timer on my camera to
24 take the picture.

25 Q. Mr. Barry, where are your boys now?

Barry - Direct by Ms. Minick

1 A. I don't know. They're in CPS care. That's all I know.

2 Q. What is the status of your parental rights?

3 A. I still have them, but they're working on trying to
4 terminate them.

5 Q. And how do you feel about that?

6 A. I'm not happy with it, because they are my boys.

7 Q. Do you still love your boys?

8 A. Immensely.

9 Q. Have you given up the nudist lifestyle?

10 A. Yes, ma'am.

11 Q. Would you have ever let Craig Noonan, Mr. Noonan around
12 your kids if you had known he was a registered sex offender?

13 A. Not at all.

14 Q. Knowing what you know now, Mr. Barry, would you do anything
15 differently?

16 A. A lot differently. You know, I would probably -- I know I
17 would definitely be checking people out before I let them
18 around my kids. I probably would have explored different
19 avenues other than the nudist lifestyle with the boys and --

20 Q. How do you feel about your decisions that you made or lack
21 of decisions at that time?

22 A. At the time I thought they were good. Looking at them now,
23 I'm not proud of it.

24 Q. What are you going to do about the termination case?

25 A. As much as I love my boys, in their best interest it would

Barry - Direct by Ms. Minick

1 be best if I let them go and be with a family so they can have
2 a normal life and not be bounced back and forth from CPS to our
3 home, to my sister's home, to CPS, because I don't think
4 they'll ever drop this if I don't.

5 Q. Would you have ever produced child pornography of your
6 children, Mr. Barry?

7 A. Not at all.

8 Q. Did you ever intend to produce child pornography?

9 A. No, ma'am.

10 Q. What were those pictures we're seeing?

11 A. Would you repeat that?

12 Q. The pictures, what were the pictures that we saw of you and
13 Mr. Noonan and the children when you were taking it together at
14 his home?

15 A. Just family poses more or less. I mean, they weren't --

16 Q. Did you ever allow Mr. -- I'm sorry. Did you ever allow
17 Mr. Noonan to produce child pornography of your boys?

18 A. No, I would have never allowed him to produce child
19 pornography.

20 MS. MINICK: I'll pass the witness, Your Honor.

21 THE COURT: Thank you.

22 Cross, please?

23 MS. ZACK: Yes, Your Honor.

24 THE WITNESS: Can I have one minute?

25 THE COURT: Certainly. Do you need some water?

Barry - Cross by Ms. Zack

1 *THE WITNESS:* Please.

2 *THE COURT:* Hold on one second. We'll take care of
3 it.

4 *MS. MINICK:* There's some water here, Judge. Here you
5 go.

6 *THE WITNESS:* Thank you. Okay. I'm ready.

7 **CROSS-EXAMINATION**

8 BY MS. ZACK:

9 Q. So we're clear, Mr. Barry, you said you met Mr. Noonan on
10 True Nudist, correct?

11 A. That's correct, yes, ma'am.

12 *THE COURT:* Microphone, please.

13 *MS. ZACK:* Oh, I'm sorry, Your Honor.

14 BY MS. ZACK:

15 Q. You met Mr. Noonan on True Nudist, correct?

16 A. Yes, ma'am, that's correct.

17 Q. And you developed a relationship with him over a six-month
18 period?

19 A. That's correct.

20 Q. Where I believe you told us, you chatted mostly with him,
21 online chatted daily, if not more than once a day?

22 A. That and also phone calls, yes, ma'am.

23 Q. Okay. And you discussed your personal life, your children,
24 your daily goings on, I believe you called it?

25 A. Yes, ma'am.

Barry - Cross by Ms. Zack

1 Q. And would you describe this relationship as very close?

2 A. As close as two people can be, yes.

3 Q. And at some point the relationship allowed you to make
4 plans for a trip to Houston, correct?

5 A. That's correct, yes, ma'am.

6 Q. And it's my understanding that you first traveled to
7 Houston on May 31st of 2010; is that correct?

8 A. Yes, ma'am, I believe so.

9 Q. And you stayed for five days?

10 A. Yes, ma'am.

11 Q. Okay. And the second trip to Houston, you came either on
12 June 17th or 18th and you stayed for six days?

13 A. I believe that's correct, yes, ma'am.

14 Q. Okay. And that was the trip for the job fair, correct?

15 A. Yes, ma'am.

16 Q. And the third trip was sometime after Christmas, so the
17 26th, 27th of December of 2010 through sometime after
18 January 1st or 2nd, because you were there for the new year
19 going from 2010 to 2011?

20 A. Yes, ma'am, that's correct.

21 Q. Okay. Do you know if you went home New Year's Day, the 1st
22 or if it was the 2nd? Do you know for sure?

23 A. I can't remember right offhand, no, ma'am.

24 Q. Okay. And just to clear this up, wfglassman@hotmail, that
25 was your e-mail address?

Barry - Cross by Ms. Zack

1 A. Yes, ma'am, that's correct.

2 Q. And you used that as a user name for chatting?

3 A. Yes, ma'am.

4 Q. Okay. So all those chats in 7 where it says "wfglassman,"
5 that's you?

6 A. It could be, but my computer was set up to when you turned
7 it on or brought it up, that MSN would automatically pop up,
8 because I had the e-mail in there. So anybody that got on the
9 computer, my chats were -- or my chat messages were there, but
10 for the most part, yes, it would have been me.

11 Q. Okay. So all the explanations you gave today and all the
12 chats that were reviewed and are entered into evidence, that
13 was you?

14 A. I believe so, yes.

15 Q. Okay. And you used the True Nudist Web site, the MSN chat,
16 you said that you Skype, you used all different kind --

17 A. No, ma'am, I didn't Skype, because Skype would not work on
18 my computer. Every time I tried to bring it up, it would crash
19 my computer, so I didn't use Skype.

20 Q. So how is it that when your computer was forensically
21 examined, there were Skype logs demonstrating that you Skyped
22 all the time?

23 MS. MINICK: Your Honor, I'm going to object. That's
24 not in evidence.

25 MS. ZACK: Your Honor --

Barry - Cross by Ms. Zack

1 *THE COURT:* I'm going to allow --

2 *MS. ZACK:* -- Special Agent Chappell --

3 *THE COURT:* Yeah, I'm going to allow it based on my
4 understanding of the record.

5 A. Okay. I don't know of any chats that were done on Skype.
6 I hadn't seen any Skype chats. Because all of the chats that
7 you have in evidence, those would have been done from MSN.

8 BY MS. ZACK:

9 Q. That's not what my question was.

10 A. Oh, I'm sorry.

11 Q. I didn't say that we had chats. Special Agent Chappell, do
12 you remember him testifying that Skype doesn't save the chats?
13 It just logs that the activity occurred. Do you recall that
14 testimony?

15 A. No, ma'am, I don't.

16 Q. And he also testified, do you not recall, that there
17 were -- that there was forensic evidence that you had regularly
18 used Skype on your computer?

19 A. I don't recall that, because like I said, it crashed my
20 computer.

21 Q. Let's talk about your computer. Skype crashed which
22 computer?

23 A. The Dell laptop.

24 Q. And when did you get the Dell laptop?

25 A. I couldn't tell you the exact date.

Barry - Cross by Ms. Zack

1 Q. Can give me an approximately?

2 A. 2007, 2008.

3 Q. And prior to that, you said you had what kind of computer?

4 A. A Dell laptop -- or a Dell desktop.

5 Q. Okay. But you said that it died, it --

6 A. Yeah, it crashed. The hard drive was gone. The operating
7 system wouldn't work. I couldn't even get a new drive to work
8 on the machine.

9 Q. And when did it die?

10 A. Prior to me getting this, and that's why I bought it,
11 because I was doing my schooling.

12 Q. Okay. So if your operating system tells us that it was
13 installed on the Dell on 1-19-2008, do you take issue with
14 that?

15 A. Most of the computers at that time came with Skype, AOL.
16 It doesn't mean that -- it doesn't mean when I opened up my
17 computer the very first time, that it would have gone through
18 and brought all the applications that were preprogrammed on
19 there onto the system.

20 Q. Okay. Maybe you didn't understand my question. Does it
21 sound right to you that the operating system, that when you
22 opened it up for the first time, tells us forensically that
23 that happened on January 19th, 2008? Does that sound right to
24 you?

25 A. It could be, yes.

Barry - Cross by Ms. Zack

1 Q. Okay. And when did you tell Ms. Minick that you became
2 interested in becoming a nudist?

3 A. I believe it was 2000 -- either 2008 or 2009.

4 Q. Okay. And you told her that you researched nudist therapy
5 for children on the old computer, which you had to -- you got
6 rid of and didn't use when you got this new one, correct? So
7 that would have been prior to January 19th, 2008; is that
8 correct?

9 A. Yes, but not in the aspect that you're asking it.

10 Q. I'm just asking when the search occurred. It would have
11 been prior to January 19th, 2008; is that correct?

12 A. Not extensively. That's what I'm trying to get at.

13 Q. That's what you told Ms. Minick.

14 A. She asked me the first time that I saw it and I told her
15 that and the reasoning why I saw it is what I'm getting at, is
16 that during my schooling, one of the classes that I had to take
17 was to write a paper and they gave us choices. And mine was
18 dealing with single fathers. And when I was researching single
19 fathers, one of the things that came up with single dads and
20 their children was nude dads and their boys. And I had read
21 that article and used part of it in my research paper.

22 It was later after I started working with
23 developing the boys that I remembered my article and began to
24 research it on this computer and that's where I found the
25 chat -- or found the blogs and the Web sites dealing with

Barry - Cross by Ms. Zack

1 Dr. Okami, True Nudists and became more interested in it.

2 Q. And your interest overrode the criticisms of Dr. Okami's
3 study, correct?

4 A. Dr. Okami agreed that raising --

5 Q. Sir, that's not the question.

6 *THE COURT:* Answer the question first, sir.

7 A. I'm sorry. Go ahead. Repeat that for me.

8 BY MS. ZACK:

9 Q. Your interest in nudism with children overrode any
10 criticism that Dr. Okami's article or research garnered; is
11 that correct?

12 A. No, ma'am.

13 Q. You weren't aware of the criticism?

14 A. I never saw any criticism by Dr. Okami.

15 *THE COURT:* That's not the question.

16 BY MS. ZACK:

17 Q. That's not what I'm saying, Mr. Barry. Listen to the
18 question. That you pursued this avenue of nudism with your
19 children in spite of all the criticism of Dr. Okami's research
20 and article?

21 *MS. MINICK:* Well, Your Honor, I'm going to object,
22 because he just testified that he didn't know of any criticism.

23 *THE COURT:* By Dr. Okami. This is not criticism by
24 Dr. Okami. It's of Dr. Okami. If he's unaware of any, then he
25 can see that and --

Barry - Cross by Ms. Zack

1 *MS. MINICK:* I'm sorry. I thought that's what he
2 testified to.

3 A. She said by Dr. Okami.

4 *THE COURT:* No, she didn't.

5 *THE WITNESS:* Oh, I'm sorry.

6 *THE COURT:* At least that's not what I heard. I could
7 be wrong.

8 A. Did you say "by doctor" or "of doctor" --

9 BY MS. ZACK:

10 Q. Of doctor.

11 A. Oh, of Dr. Okami. I never looked at any research
12 criticizing his -- people saying that his research was wrong or
13 bad.

14 Q. So when you testified at the previous CPS trial and said
15 you were aware of the criticism of Dr. Okami's study, that
16 wasn't a true statement?

17 A. Not at the time of the research. That was stated after we
18 started the CPS trial and Mr. Jarvis and I had looked at other
19 research and that's when we found the research criticizing
20 Dr. Okami's research and study. But it wasn't prior to me
21 going in to the nudist lifestyle.

22 Q. So it was just Dr. Okami's article, you didn't see any
23 criticism ever, and you decided that the best avenue for your
24 children was to adopt what you have described now as a
25 stigmatized lifestyle, the nudism, that it contains stigmas,

Barry - Cross by Ms. Zack

1 correct?

2 A. Yes, ma'am.

3 Q. This was going to be good for the two adopted Hispanic boys
4 with two dads?

5 A. That's correct.

6 Q. Okay. Just so we're clear.

7 *THE COURT:* Did you consult with anybody before you
8 did this?

9 *THE WITNESS:* Well, I was actually talking with other
10 families on True Nudist that --

11 *THE COURT:* No, not on True Nudist.

12 *THE WITNESS:* -- but --

13 *THE COURT:* Excuse me. Did you consult with any
14 professionals, with any people who were knowledgeable about
15 raising children, particularly children who were adopted into a
16 family, particularly into an unconventional family?

17 *THE WITNESS:* No, ma'am.

18 *THE COURT:* Did you do any research to see if there
19 was any criticism or negative comment on the studies that you
20 saw?

21 *THE WITNESS:* No, I did not.

22 *THE COURT:* Thank you. Go ahead.

23 BY MS. ZACK:

24 Q. And then you -- I believe you said you started practicing
25 this lifestyle yourself at the end of 2008, beginning of 2009?

Barry - Cross by Ms. Zack

1 A. Yes, ma'am, somewhere around there.

2 Q. And that you slowly integrated your children?

3 A. I didn't really integrate them in the terms that I think
4 that you're asking for, saying that, okay, we're going to do
5 the nudist lifestyle and you need to take your clothes off.

6 Q. No, no, I understand that you have testified very clearly
7 that you never sat down with them and said, "Hey, y'all, we're
8 going to be nudists now." I get that. When I say "integrate,"
9 I believe you said it stated that you were exercising in front
10 of them and that because you had your clothes off, they took
11 their clothes off and that this slowly progressed?

12 A. Yes, ma'am, that's correct.

13 Q. Okay. And you've testified that Mr. Peterson was not on
14 board with this in the beginning?

15 A. Not on board at the beginning, no, ma'am.

16 Q. And that for about a year and a half, he didn't participate
17 in any of this, you didn't do it when he was around, that this
18 was just you and the boys?

19 A. That's -- I can't say yes or no, because I can't remember
20 back then, but, yes.

21 Q. I mean, does the timing sound about right?

22 A. No, because there were times that during that frame, even
23 prior to going to, that if Mr. Peterson, you know, took a
24 shower and, you know, we were exercising naked, that he would
25 just -- he would come out also. But he wasn't a daily thing

Barry - Cross by Ms. Zack

1 like the boys and I were.

2 Q. I'm a little confused. You said that during the year prior
3 to and during the time you were visiting Mr. Noonan, which was
4 June of 2010 to December 2010, that December 2010 I believe you
5 told Ms. Minick that you said that your relationship with
6 Mr. Peterson as far as you were concerned was practically done?

7 A. That's correct.

8 Q. Okay. And you said that you had been estranged from him
9 for about a year, not estranged like he wasn't in the house,
10 but that you barely talked and maybe in passing. So you're
11 telling us that during this time where you were not getting
12 along, where your relationship is bad, that he is partaking in
13 this nudist lifestyle that he wasn't originally on board with
14 and he was all into it?

15 A. There were points during that year that we were trying to
16 work out our differences. And there were only a few times that
17 he would do it. I don't think that -- like I said, he wasn't
18 comfortable with his body and he thought he was fat. So he
19 would very rarely get undressed. He would very rarely get
20 undressed in front of me.

21 Q. So he really wasn't on board with it?

22 A. Not 100 percent, no, ma'am.

23 Q. So this was not a family nudism thing. It was a you and
24 the boys nudism thing?

25 A. But for all legal purposes, it -- family is me and the

Barry - Cross by Ms. Zack

1 boys, because it's -- if you go into a court, we're not legally
2 married, but -- so the family was the boys and I. And that's
3 how I perceived it during that year, because 90 percent of the
4 time Mr. Peterson wasn't around and didn't really care what we
5 did.

6 Q. And yet you have tons of family pictures of you and the
7 boys and Mr. Peterson, correct?

8 A. Tons of pictures?

9 Q. There's pictures, of normal family pictures of the four of
10 you. Pictures of Mr. Peterson with the children outside,
11 riding bikes, the picture of all of y'all sitting in front of
12 the stained glass window you made, Christmas pictures.

13 Mr. Peterson never appears naked in any pictures, correct?

14 A. Okay. But those pictures were taken after we got the boys
15 back from CPS.

16 Q. Mr. Peterson never appears in any pictures naked?

17 A. That's correct.

18 Q. Not on your camera, correct?

19 A. Correct.

20 Q. Not in your computer?

21 A. Correct.

22 Q. Not in any subfolders, files on your computer?

23 A. That's correct.

24 Q. Not in any instant messages, nothing?

25 A. That's correct.

Barry - Cross by Ms. Zack

1 *THE COURT:* May I ask a question here?

2 *MS. ZACK:* Yes, ma'am.

3 *THE COURT:* Did you ever show Mr. Peterson pictures of
4 you and the boys with or without Mr. Noonan naked?

5 *THE WITNESS:* No, ma'am.

6 *THE COURT:* Go ahead, please.

7 BY MS. ZACK:

8 Q. And I believe you indicated earlier that the only pictures
9 you were aware of of the boys naked were the ones that were
10 taken with you and Mr. Noonan together; is that correct?

11 A. And the ones with the boys painting that were on my camera,
12 yes, ma'am.

13 Q. Okay. And today you said that you had never seen 4D, 4T,
14 4U, 4C, 4EE, 4I, 4J, 4K, 4L, 4M, 4P, 4T -- I already said 4T,
15 and some of the other ones, I think X, Y, and Z. But you said
16 the ones in Exhibit 4, those -- these you had not seen before?

17 A. Prior to?

18 Q. Either -- I believe you said either the CPS trial or the
19 meeting after the motion to suppress?

20 A. That's correct.

21 Q. Okay. So let's look at 4T. And you said you don't know
22 how these pictures got on your computer?

23 A. That's correct.

24 Q. Okay. And this picture was taken where?

25 A. I believe it was taken at Mr. Noonan's house, because I

Barry - Cross by Ms. Zack

1 think that's the makeshift bed that he made for them.

2 Q. Okay. And that's Mr. Noonan's dog, right?

3 A. Yes, that's Bozley.

4 Q. Okay. And Bozley was never at your home?

5 A. That's correct.

6 Q. Okay. So this picture, 4T, was taken at Mr. Noonan's house
7 on -- you would agree that that was taken with Mr. Noonan's
8 camera?

9 A. I don't know what camera it was taken with.

10 Q. Okay. Well, if Government's Exhibit 6V, which is the EXIF
11 data from Mr. Noonan's -- from these pictures that say it was
12 taken from Mr. Noonan's camera, you don't quibble with that, do
13 you?

14 A. No, ma'am, not at all.

15 Q. Okay. And Government's Exhibit 30, which is the creation
16 dates, Exhibit 4T has a creation date of 6-13-2010. Okay?

17 A. Yes, ma'am.

18 Q. All right. You were not in Houston on June 13th, 2010,
19 based on your testimony both today and at the CPS trial; is
20 that correct?

21 A. I couldn't remember exactly what date. We were trying to
22 figure it out when Ms. Minick and I were looking at it. When I
23 went down the second time, I couldn't remember if it was the
24 following week or the following two weeks. I just remember
25 that during that time in June there was a job fair that I went

Barry - Cross by Ms. Zack

1 down to.

2 Q. So the testimony you gave at the CPS trial was incorrect,
3 and the testimony you gave here today five minutes ago was
4 incorrect?

5 A. No, I just don't remember. I mean, that was four years
6 ago. I can't tell you the exact date. And that trial was
7 three years ago.

8 Q. Well, wouldn't your memory three years ago have been better
9 about what happened four years ago than it is today?

10 A. Probably, yes.

11 Q. Okay. So what do you have to demonstrate that you were in
12 Houston on June 13th? What can you show us?

13 A. I don't have anything.

14 Q. Okay. And you don't know how this got into the Craig
15 Houston subfolder Craig H on your computer on a date that we
16 have no evidence that you were in Houston?

17 A. No, ma'am.

18 Q. Okay. And you said that you don't know how any of these
19 images got on your computer?

20 A. That's correct.

21 Q. Okay. Do you remember ever saying anything different about
22 that?

23 A. No, ma'am.

24 Q. You never said that you took the memory card out of
25 Mr. Noonan's camera and put it in your computer?

Barry - Cross by Ms. Zack

1 A. No, ma'am, I don't.

2 MS. ZACK: Your Honor, may I approach?

3 THE COURT: You may. You need not ask permission.

4 MS. ZACK: Sorry. I apologize.

5 THE COURT: I know, it's habit.

6 BY MS. ZACK:

7 Q. I'm showing you the trial transcript from the hearing, the
8 CPS trial.

9 A. Yes, ma'am.

10 Q. And I believe the date of that -- well, this was day two.
11 Where is the date here? July 25th, 2012.

12 A. Okay. Okay.

13 Q. Do you remember being asked this series of questions and --

14 MS. MINICK: I'm sorry to interrupt. Could you
15 indicate what page?

16 MS. ZACK: Oh, I'm sorry.

17 THE COURT: Page and line.

18 MS. ZACK: Page 94.

19 THE COURT: Thank you.

20 MS. ZACK: Starting on line 5.

21 BY MS. ZACK:

22 Q. Question: "Did Craig Noonan have any pictures of O.B. and
23 R.B. in his camera?"

24 Answer: "I don't know."

25 Question: "How -- you said that -- that some

Barry - Cross by Ms. Zack

1 were taken with his camera?"

2 Answer: You said, "But he could have erased
3 them. I don't know. I know that the pictures that -- that
4 were taken off his camera, some of them ended up on my computer
5 as --"

6 MS. MINICK: Your Honor, I'm sorry to object. But I
7 believe this is improper impeachment. I believe she has to
8 give him an opportunity to look at it and admit or deny whether
9 or not he actually did make those at the time.

10 MS. ZACK: Your Honor, he just said he never said
11 that.

12 THE COURT: I agree. I think we are --

13 BY MS. ZACK: --

14 Q. "Some of them ended up on my" --

15 THE COURT: -- following proper procedures so far.

16 BY MS. ZACK:

17 Q. "Some of them ended up on my computer as a copy because
18 Junior had taken the pictures."

19 A. Okay.

20 Q. And Junior is R.B., correct?

21 A. Yes, ma'am.

22 Q. Question: "How did they get from his camera to your
23 computer?"

24 Answer: "It was a little scan disk. It was just
25 put in on my computer."

Barry - Cross by Ms. Zack

1 Question: "Okay. So he -- so y'all took
2 pictures and then you put them on a disk?"

3 Answer: "No. It -- the little memory card
4 inside the digital camera, I have the slot on my computer that
5 reads it."

6 Question: "Okay. So you took that from Craig's
7 camera?"

8 Answer: "Yes."

9 Did you say that?

10 A. Yes. And it could have been because at the time when we
11 went to Kemah, went to the zoo, went to Galveston, I did not
12 have a camera. Mr. Noonan had a camera, and I knew that his
13 camera had the scan disk. So pictures of that day that R.B.
14 took and Mr. Noonan took at the beach, at Kemah, whatever, he
15 took from that disk, put it in my computer and moved the
16 pictures over to my computer.

17 Q. You said you did it.

18 A. I didn't do it.

19 Q. That's what this says. "So you took that from Craig's
20 camera?" "Yes."

21 A. Well, I didn't take it from his camera. It was taken from
22 his camera. I may not have heard the question all the way
23 through but -- or answered it in my head, but I didn't take it
24 and put it in there. Mr. Noonan was the one that would have
25 done it.

Barry - Cross by Ms. Zack

1 Q. So you're aware that the pictures -- what you're telling us
2 now is you're aware that the pictures from Kemah, from
3 Galveston, the pictures that R.B. or O.B. took, those were on
4 your computer?

5 A. Yes, ma'am.

6 Q. Where?

7 A. I don't have any idea. I didn't create it. Mr. Noonan --

8 *THE COURT:* I'm sorry. What is "it"? You didn't
9 create it?

10 *THE WITNESS:* I didn't create a folder or a file to
11 put them in, because I wasn't the one that scanned them from
12 his disk to my computer. Mr. Noonan did it.

13 BY MS. ZACK:

14 Q. And these are the same pictures that you're saying you
15 didn't know were on your computer? I mean, did you know he put
16 them on the computer?

17 A. I knew Kemah and them were on -- that Kemah and Galveston
18 were on there, I knew those, because I knew those were taken.

19 Q. Well, how do you know they were on there if you didn't do
20 it?

21 A. Because he said that he put them on there, and I hadn't
22 opened them up yet. I was still -- like I said, at that point
23 I hadn't done anything with those pictures to put them in their
24 life book. I was still working on my master's degree and I was
25 also starting a certification degree in pharmacy tech, along

Barry - Cross by Ms. Zack

1 with helping the boys with school and running a house and
2 trying to find a job, that I didn't never get into those
3 folders. So I don't even know where they were originally
4 created at.

5 Q. Well, now I'm confused, because I believe earlier you said
6 that you showed some of those pictures to your sister and your
7 niece, that you showed these to family members. Where -- how
8 would you have Mr. Noonan's pictures to show to your family
9 members that you have never testified ever went to Mr. Noonan's
10 house or had any contact with Mr. Noonan, if you didn't know
11 where they were on your computer?

12 A. I said I showed my sister family events. I didn't
13 specifically say Galveston or Kemah. What I said was events
14 that were down there. And I also had bought some of the
15 four-by-five -- or three-by-five photos, because he had a
16 printer, and we printed some out on that so that the boys could
17 have them. Those, again, I had showed -- you know, when we got
18 home, I showed my sister just when she was over at the house
19 one day.

20 Q. Never explained that to Ms. Minick when you were talking
21 about that earlier?

22 A. No.

23 Q. Okay. And you didn't have any pictures to show your sister
24 on your camera, correct?

25 A. That's correct.

Barry - Cross by Ms. Zack

1 Q. Because you didn't get that camera until Christmas, right?

2 A. Well, my parents actually gave it to me at the beginning of
3 the December, but that was my Christmas present, yes.

4 Q. And you took a lot of pictures at Christmas?

5 A. Yes, ma'am.

6 Q. And when asked why you weren't nude at Christmas, I believe
7 your first response was, "Because it's Christmas." And then
8 you thought a second and said, "Oh, no, no, no, my sister and
9 my niece were there." Where are they in those pictures?

10 A. Well, there's other pictures that has my niece and my
11 sister in them at Christmastime. If you go back and pull up
12 all of my pictures, you've probably seen them. And, also, they
13 may not have been taken with my camera. They may have been
14 taken with her camera or Mr. Peterson's camera when my sister
15 and niece and the boys were in the picture.

16 Q. Where are they on your computer?

17 A. I don't have any idea. I may not have put them on my
18 computer.

19 Q. And why is it that one wouldn't be nude at Christmas just
20 because it's Christmas?

21 A. Well, because at Christmastime, my family is around. So if
22 they were around, we wouldn't be hanging out nude.

23 Q. But you were hanging out nude at Mr. Noonan's on New
24 Year's?

25 A. Correct.

Barry - Cross by Ms. Zack

1 Q. And his family was around?

2 A. His family left before New Year's.

3 Q. Now, let's talk about 4EE and the series of unknown -- what
4 we've been referring to -- when I say the unknown child and
5 man, do you know what series of pictures I'm talking about?

6 A. Yes, I do.

7 Q. Okay. And these are the ones that were found in your
8 Instant Messenger cache?

9 A. That's correct.

10 Q. And you heard Special Agent Chappell testify that in order
11 for them to show up in the Instant Messenger cache, they have
12 to be viewed, correct? You heard him testify to that?

13 A. Yes, I did hear him testify to that.

14 Q. Okay. And you said that you have computer training,
15 correct?

16 A. Yes, ma'am.

17 Q. And so you know that everything on a computer is code,
18 correct?

19 A. Yes, ma'am.

20 Q. And that images are code until they're opened, correct?

21 A. No.

22 Q. You disagree with that?

23 A. Yes, I do.

24 Q. Based on what?

25 A. Based on my training with Microsoft because --

Barry - Cross by Ms. Zack

1 Q. Stop one second. Let's talk about your training with
2 Microsoft and then we'll get back to this, because this is
3 important. When did you get your Microsoft training?

4 A. I started Microsoft training in 2003.

5 Q. And where did you get it?

6 A. I took it through Microsoft when I was working for Biggs
7 and Mathews, because I was their network operator. So, I was
8 AA certified. I was Windows server 2003 certified and 2006
9 certified. And then I had also looked at one of their other
10 trainings, which I never completed, because I left Biggs and
11 Mathews before I got into it.

12 Q. Okay. So you weren't able to maintain those
13 certifications?

14 A. I didn't keep up with them, no, ma'am.

15 Q. Okay. And the operating systems and the things that you
16 trained on, those have all been updated since 2006?

17 A. Yes, ma'am.

18 Q. And these pictures that we talked about, whether you agree
19 or disagree with the fact that they were opened or not, let's
20 talk about the times. Okay? Because in 4 -- I'm sorry, in
21 Government's Exhibit 30, you saw the creation dates, correct?

22 A. Yes, ma'am.

23 Q. And the times of day that these pictures were placed or
24 show up in your Instant Messenger cache, 4AA was at 6:50 p.m.
25 And you don't quibble with the creation dates, do you?

Barry - Cross by Ms. Zack

1 A. No, ma'am.

2 Q. Okay. So 4AA was at 6:50 p.m. and 4DD was at 7:00 p.m. on
3 11-20?

4 A. Okay.

5 Q. Are you with me so far?

6 A. Yes, ma'am.

7 Q. And BB -- 4BB, 4EE, and 4FF were at 4:26, 4:30, and 4:43 on
8 11-20.

9 A. Okay.

10 Q. About two hours later, right -- earlier, sorry?

11 A. I was going to say -- okay. Yes, ma'am.

12 Q. Earlier. So we've got the first three, then there's, like,
13 a 2-hour, 2-hour-and-15-minute break, then we get the next two,
14 correct?

15 A. Correct.

16 Q. And the final one was on December 18th, I believe, like
17 three weeks later?

18 A. Okay.

19 Q. Okay. And it's your testimony that you never saw any of
20 these pictures and that they were just sent to you and you
21 closed them and never looked at any of it?

22 A. That's correct.

23 Q. Okay. And it doesn't make any sense to you that these
24 would have been contained in any chats that you were having,
25 based on the time frames that they were taken -- or had and

Barry - Cross by Ms. Zack

1 that they were -- some of them were so close in time, that
2 doesn't make any sense to you?

3 A. No, ma'am, it doesn't.

4 Q. Okay. And do you know what a registry key is?

5 A. Yes, ma'am.

6 Q. What is it?

7 A. A registry key is, in an operating system itself, you
8 actually have to go in to find it. And a registry key is where
9 coding is kept for different programs in the system, different
10 partition windows that are in there and what data and what
11 codes are in there.

12 Q. How do you change it?

13 A. You better know registry key really well or you can mess up
14 a computer if you go in and change it or you can even erase
15 them.

16 Q. That wasn't my question.

17 A. I don't know how to change them, because I've never played
18 in the registry key.

19 Q. And you said earlier that the access dates are -- could be
20 different depending on how your computer is customized,
21 correct?

22 A. That's correct.

23 Q. Your computer was not customized?

24 A. On the original Windows setup?

25 Q. On that Dell?

Barry - Cross by Ms. Zack

1 A. No, no, on the original Windows setup, yes, ma'am, it was
2 customized.

3 Q. How?

4 A. When you go to load it up on there -- because the original
5 system on that Dell was Windows XP, and the programs that we
6 were running for school would not work on XP. They were
7 created to run on Vista. So I went out and bought the Vista
8 software and loaded it onto that operating system.

9 Q. And how did you do that?

10 A. You went -- when I bought the software, you have a disk
11 that you have to insert into the disk drive and you tell it
12 to -- or it automatically comes up with the run sequence using
13 the exe file and then you start loading the Windows onto your
14 system.

15 Q. And then what do you do?

16 A. Well, then depending on how the program is set up, it will
17 ask you the date. It will ask you if -- that you have a
18 previous version of Windows. Do you want to overwrite it, do
19 you want to do a normal setup, or do you want to do a custom
20 setup. And once you answer all those questions, then it goes
21 in and loads Windows up on your system until it completes.

22 Q. Did you do normal or custom?

23 A. I did a custom.

24 Q. How?

25 A. Well, I answered the question "custom," and then it gives

Barry - Cross by Ms. Zack

1 you the options of what programs you want to add to your
2 computer at that time and --

3 Q. What did you add?

4 A. Well, it gives you the ones to do, like Word, MSN, Hotmail,
5 AOL, Yahoo. So you can pick and choose which ones you want to
6 put on there because of the amount of space that you have on
7 the disk drive.

8 Q. And which ones did you pick?

9 A. I used the ones that I normally did, like Hotmail, Yahoo,
10 Word, and then I went ahead and once I did that, then I loaded
11 my MSN -- or MS Office on there, which has PowerPoint, Access.

12 Q. When you loaded these on was there any specific area where
13 you could change what your access dates were?

14 A. Yes, there is a place that you can go into it if you know
15 how to customize it. I did not do that on my computer.

16 Q. Now, you said that you never saw the bathroom pictures I
17 believe that are contained in Government's Exhibit 9?

18 A. That's correct.

19 MS. MINICK: Is this something else you're offering?

20 MS. ZACK: Well, these are already in evidence.

21 MS. MINICK: Okay. Are you asking --

22 MS. ZACK: I just want to show it to you, because we
23 didn't previously print it out.

24 MS. MINICK: Okay. That's fine.

25 BY MS. ZACK:

Barry - Cross by Ms. Zack

1 Q. I'm going to show you, Mr. Barry, what's going to be marked
2 as Government's Exhibit 31. Have you seen that picture before?

3 A. No, ma'am.

4 Q. You've never seen it?

5 A. Well, I did. I saw this at -- prior to the CPS trial.

6 Q. Okay. And who is that?

7 A. That is Mr. Noonan and my two boys.

8 Q. And they are where?

9 A. In his bathtub.

10 Q. Okay. And there's two separate pictures here, correct?

11 A. Yes, ma'am.

12 Q. In the top picture, Mr. Noonan's hands are on one of your
13 boy's genital regions and in the second one, the boy's hand,
14 that's sitting with his butt up against Mr. Noonan's crouch,
15 has his hands in his own crouch?

16 A. Well, it looks like his butt is at his knee level and not
17 in his crouch area.

18 Q. Well, okay. Then would you agree that your son is sitting
19 with his buttocks facing Mr. Noonan's genitals and your son has
20 his hands on his penis?

21 A. My son's hands are on his own, yes.

22 Q. Okay. And in this picture, Mr. Noonan's hands are on your
23 son's penis?

24 *THE COURT:* What's the number --

25 A. I don't know if they're on his penis or if they're on his

Barry - Cross by Ms. Zack

1 stomach. It looks like they're more on his stomach and not on
2 his penis.

3 MS. ZACK: Government's Exhibit 31 and 32, Your Honor.

4 THE COURT: All right. Just so our record is clear.

5 A. So that's your own interpretation.

6 BY MS. ZACK:

7 Q. Okay. But we're all in agreement that this is Mr. Noonan's
8 in Mr. Noonan's tub with your two children?

9 A. Yes, ma'am.

10 Q. And you don't know when this was taken?

11 A. No, ma'am.

12 Q. And you don't know how it got on your computer?

13 A. That's correct.

14 Q. And you know what EXIF data is, right? We've been
15 discussing it?

16 A. Yes, ma'am, I do.

17 Q. Okay. And would it surprise you that the EXIF data from
18 these pictures say they were taken with your Kodak camera?

19 A. Would it surprise me? Yes, it would.

20 Q. Okay. But you're not disagreeing that that's what the EXIF
21 data is?

22 A. I haven't seen the EXIF data.

23 Q. I'll show that.

24 A. It just says "Eastman Kodak Company, Easyshare M575 digital
25 camera," yes, ma'am.

Barry - Cross by Ms. Zack

1 Q. Okay. That's your camera?

2 A. I don't know if that's my camera, because I didn't get to
3 use it that often before they confiscated it. So I couldn't
4 tell you what the numbers are or anything else.

5 Q. Well, would you agree with me that on the back of
6 Government's Exhibit 26, it says "Kodak Easyshare M575"?

7 A. Yes, ma'am.

8 Q. Okay. All right. So these pictures that were taken of
9 Mr. Noonan and your two boys in Mr. Noonan's bathtub, you know
10 nothing about?

11 A. That's correct.

12 Q. And would you --

13 *MS. MINICK:* If I may, Judge -- I'm sorry to
14 interrupt -- but No. 20, we don't have a copy of that, I don't
15 believe. And No. 20 you're saying is -- these pictures came
16 from his -- from what exhibit that's already in evidence?

17 *MS. ZACK:* No. 2, the forensic image of Mr. Barry's
18 hard drive.

19 *THE COURT:* It might be helpful to put it on the Elmo
20 so that everybody can see it at the same time.

21 *MS. ZACK:* Yes, ma'am.

22 *MS. MINICK:* Well, you questioned him about the EXIF
23 data coming from his camera and not his hard drive.

24 *MS. ZACK:* No, the EXIF data on the pictures
25 demonstrate they came from his camera.

Barry - Cross by Ms. Zack

1 *THE COURT:* They, the images?

2 *MS. ZACK:* They, the images came from his camera.

3 *THE COURT:* Okay. And the exhibit that you showed him
4 is clearly Mr. Barry's camera, correct?

5 *MS. ZACK:* Yes.

6 *THE COURT:* That was the earlier established link, but
7 not repeated here.

8 *MS. ZACK:* Exhibit 26 is Mr. Barry's camera.

9 *THE COURT:* All right. Thank you.

10 *MS. ZACK:* Or the camera seized at Mr. Barry's home
11 during the search of his home.

12 *THE COURT:* All right.

13 *MS. ZACK:* Okay.

14 BY MS. ZACK:

15 Q. So -- oops, that's upside down. Okay. So, Government's --
16 that was the wrong one. Government's Exhibit 31, right, and
17 then Government's Exhibit 32, same bathtub that we've been
18 talking about all of these bathroom pictures, correct?

19 A. Yes, ma'am.

20 Q. Okay. And can you tell me where in these pictures are the
21 toys?

22 A. Are the what?

23 Q. The bath toys.

24 A. I don't know. I didn't see any in there.

25 Q. Okay. Have you seen bath toys in any of the pictures in

Barry - Cross by Ms. Zack

1 the bath at Mr. Noonan's house?

2 A. I believe in the bubble bath, there was toys in there.

3 Q. In the picture -- the one picture where you can't see your
4 children's genitals?

5 A. Yes.

6 Q. But no toys in these two pictures?

7 A. No, ma'am.

8 Q. And no toys in the picture of your son with his hips thrust
9 in the air and his genitals exposed, no toys in that picture?

10 A. I don't recall, no, ma'am.

11 Q. Now, let's talk about how the picture was taken.

12 MS. MINICK: Well, Your Honor, has this been offered
13 and admitted because --

14 THE COURT: Number?

15 MS. ZACK: 31.

16 THE COURT: Is this in evidence?

17 MS. MINICK: No, Your Honor, it's not.

18 MS. ZACK: I disagree. Your Honor, this is contained
19 in Government's Exhibit No. 2, which is the forensic image of
20 Mr. Barry's hard drive.

21 MS. MINICK: And, Judge, when we had a meeting --

22 THE COURT: Is that in evidence?

23 MS. ZACK: Yes, Your Honor, that was --

24 MS. MINICK: I'm sorry.

25 MS. ZACK: -- preadmitted.

Barry - Cross by Ms. Zack

1 *THE COURT:* One at a time, please. All right. Yes,
2 that was my recollection. I just wanted to get it clear.

3 *MS. MINICK:* However, when we had a pretrial meeting
4 and asked to see all the exhibits that they intended to
5 introduce, the actual pictures, hard copies, whatever, we even
6 looked at the disk, of all the disks, we were never shown the
7 forensic image of the laptop and the hard drive of Mr. Barry.

8 *THE COURT:* What's the relationship -- well, it's on
9 the exhibit list. It's been on the exhibit list as preadmitted
10 without objection since April 7. What's the relationship of
11 what you're showing me to what is identified as Exhibit 3,
12 which are child pornography images from the Dell laptop, the
13 DVD?

14 *MS. ZACK:* Okay. Right. Exhibit 3 was created back
15 before April 7 of what at that time were the child pornography
16 images we believe were on Mr. Barry's computer.

17 *THE COURT:* Did it Exhibit 3 include 31 and 32?

18 *MS. ZACK:* No, it did not, and I can explain why.

19 *THE COURT:* That would be helpful.

20 *MS. ZACK:* Okay. We did not know of these two
21 images -- and when I say "know of," saw, because we were
22 looking in different places --

23 *THE COURT:* Places on the computer?

24 *MS. ZACK:* On the computer. Until we received the
25 trial transcript from the CPS trial, which was after April 7th.

Barry - Cross by Ms. Zack

1 And I don't know the exact date that we received that trial
2 transcript, but it was even after -- it was after the pretrial,
3 the last pretrial hearing. And in reviewing that trial
4 transcript, I can demonstrate to the Court that Mr. Barry has
5 seen this picture before and discussed it at that trial. And
6 Mr. Jarvis represented him at that trial. This is not a new
7 image.

8 *THE COURT:* All right. Let's get that predicate out
9 and then we can have an argument about whether this should be
10 admitted.

11 *MS. ZACK:* Absolutely.

12 *THE COURT:* Thank you.

13 *MS. MINICK:* Your Honor, if I could suggest, possibly
14 they could actually pull up and use Exhibit No. 3 rather
15 than --

16 *THE COURT:* Well, 3 does not include 31 and 32.

17 *MS. MINICK:* Okay. That's right.

18 *THE COURT:* That's the point. Helpful, but not.

19 *MS. MINICK:* Well, that's our complaint, Judge, is
20 that that --

21 *THE COURT:* That's what we're about to clarify.

22 BY MS. ZACK:

23 Q. Mr. Barry, I'm showing you what was marked at the CPS trial
24 as Exhibit 17. Do you see that picture?

25 A. Yes, ma'am.

Barry - Cross by Ms. Zack

1 Q. And that picture is the same picture -- and I'll put it on
2 the ELMO so that we can all see it. That picture, this is the
3 CPS trial picture, you agree with me, what was marked as
4 Exhibit 17 in the CPS trial -- well, it's upside down, but I
5 don't think if I do it --

6 A. Yeah.

7 Q. -- the other way -- no --

8 A. I believe so, yes, ma'am.

9 MS. MINICK: I would object. This is not in evidence
10 either.

11 THE COURT: And this number is?

12 MS. ZACK: This was their Exhibit 17.

13 THE COURT: In the CPS trial?

14 MS. ZACK: In the CPS trial, yes, Your Honor.

15 THE COURT: And its relationship to -- I don't have
16 the hard copies -- 31 or 32?

17 MS. ZACK: It is the exact same image as Government's
18 Exhibit -- I'm sorry, Your Honor -- 31.

19 BY MS. ZACK:

20 Q. All right. Do you agree with me, Mr. Barry, these are the
21 same picture?

22 A. Yes, ma'am.

23 Q. Okay. And you've seen --

24 MS. MINICK: Your Honor, we're going to object that
25 this --

Barry - Cross by Ms. Zack

1 *THE COURT:* Not yet. We're still getting the
2 predicate.

3 *MS. MINICK:* Okay.

4 *THE COURT:* You'll have plenty of time to object. All
5 right?

6 *MS. MINICK:* Okay.

7 BY MS. ZACK:

8 Q. So you knew this picture existed back in July of 2012?

9 A. Yes, ma'am.

10 Q. And you knew that they got it off your computer?

11 *THE COURT:* They?

12 BY MS. ZACK:

13 Q. That HSI got this off your computer from when they did the
14 search?

15 A. No, ma'am, I had no idea where those pictures came from,
16 because they never told us where they came from. They just
17 said that they had confiscated my computer, my camera,
18 Mr. Noonan's computers, and Mr. Noonan's camera. They never
19 gave us any EXIF data, any files that says where each picture
20 was taken from --

21 Q. So --

22 A. -- during that trial, not at all.

23 Q. Okay. One second. On page -- so when you were questioned
24 about this picture in the CPS trial and you told them --

25 *MS. ZACK:* Give me one second, Your Honor, because I

Barry - Cross by Ms. Zack

1 have this in three different places and I've got to find the
2 right -- here it is. Okay. Page 91.

3 MR. JARVIS: Which day is that?

4 MS. ZACK: Day 2.

5 BY MS. ZACK:

6 Q. Let me show this to you. Line 2: "Whose computer did that
7 come off of?"

8 "I believe it was on mine."

9 Question: "Exhibit 17, who took this picture?"

10 Answer: "I don't know, but it wasn't --"

11 Question: "It's facing down, right?"

12 Answer: "Right."

13 Question: "I assume there wasn't a stand for the
14 camera?"

15 Answer: "I don't know. I wasn't in there."

16 Question: "That would be an awfully high stand,
17 wouldn't you say?"

18 Answer: "But the wall -- the wall that was on
19 his side, there was built-in bookshelves on that or shelving on
20 that side. They had a knickknack shelf, so it could be."

21 "What kind of camera was that?"

22 Answer: "Just a small digital camera."

23 You said that this -- you believe it came off of
24 your computer, did you not?

25 A. Because during that testimony and if you go back and look

Barry - Cross by Ms. Zack

1 at the testimony prior to that, they kept saying that all of
2 the pictures that were in there came off of my computer. It
3 wasn't until later during that trial that they said the
4 pictures were taken from the camera, Mr. Noonan's computer,
5 Mr. Whittington's computer, Mr. Whittington's camera, my
6 camera. So we had no idea where each picture came from at the
7 time. They just immediately assumed and stated that they were
8 all on my computer.

9 Q. And the fact that the EXIF data says it came from your
10 camera, that's just a coincidence?

11 A. Well, my camera was down there and, I mean, I didn't have
12 it under any lock and key, so just like the computer, anybody
13 could have picked it up and used it. He could have grabbed my
14 camera by mistake instead of his to use in the bathroom.

15 Q. What's a favorites folder, Mr. Barry?

16 A. What's a favorites folder? It's where you put your
17 favorite files or whatnot.

18 Q. Favorite stuff?

19 A. Yeah.

20 Q. What's a my pics folder?

21 A. That is a folder that is either created by a user or
22 created by the programs. It comes up automatically as my pics.

23 Q. And where does the my pics folder usually reside on a
24 computer?

25 A. Somewhere on the C drive. It can be anyplace.

Barry - Cross by Ms. Zack

1 Q. Can it reside in the favorites folder?

2 A. It can reside in the favorites. It can reside in pics. It
3 can reside in media. It can reside anywhere that it's set up.

4 Q. Where does the my pics default set it up?

5 A. I couldn't tell you offhand.

6 Q. Would it surprise you that that was found within the
7 favorites folder and then within the subfolder my pics of your
8 computer?

9 MS. MINICK: Would what, Your Honor? I don't know
10 what exhibit she's referring to.

11 MS. ZACK: Government's Exhibit 31.

12 THE COURT: Thank you.

13 A. Yeah, it would, because I don't remember putting them in
14 that spot on my computer, because I don't remember taking these
15 pictures. I didn't take these pictures. And if it was taken
16 with my camera, why is it only on my computer and not left on
17 the camera with all the other pictures that were on my camera?

18 BY MS. ZACK:

19 Q. Well, maybe you realized that you didn't want anyone
20 scrolling through your camera and seeing Mr. Noonan's hands on
21 your son's genitals.

22 MS. MINICK: Your Honor, is that a question? I'm
23 objecting.

24 THE COURT: He asked a question.

25 BY MS. ZACK:

Barry - Cross by Ms. Zack

1 Q. Maybe you just saved it to your favorites and deleted it
2 off your camera.

3 A. No, ma'am.

4 Q. That's a possibility, isn't it?

5 A. No, because I hadn't deleted anything off of that.

6 Q. That's not forensically possible?

7 A. Well, it is forensically possible, but it doesn't mean that
8 I did that. That's assumption.

9 Q. Well, you said why would you do that?

10 A. But I -- the thing is, like I said, I had just got the
11 camera. I hadn't deleted anything off of that camera, off of
12 that disk at any time.

13 Q. You didn't take this picture, you say?

14 A. No, ma'am.

15 Q. And you talked about the timer on your camera?

16 A. Correct.

17 Q. How does that work exactly?

18 A. You have to go in and in the program you have -- or in the
19 computer itself, in the software you have to go to the timer,
20 change the setting on it and then once you get it set when you
21 hit the -- to take a pic, you have so long and you'll hear it
22 beep.

23 Q. How long?

24 A. I have no idea. I can't remember, because I didn't get to
25 play with it that much before it was taken by security, because

Barry - Cross by Ms. Zack

1 I only had it for a little over a month before they came in and
2 snatched it.

3 Q. But we looked at 20C, I believe it is.

4 MS. MINICK: Well, Your Honor, at this time I'm going
5 to object to any further testimony about this exhibit that's
6 not in evidence, if -- I think we're past the predicate.

7 THE COURT: 20C is -- excuse me. They're asking now
8 about 20C. I believe that is in evidence.

9 MS. ZACK: Can we see 20C?

10 THE COURT: We haven't come back to 31 and 32 yet.

11 MS. ZACK: Not yet.

12 MS. MINICK: I'm sorry. I understood her to be
13 comparing it to this, Exhibit 31, 32.

14 THE COURT: We may get there, but we're not.

15 BY MS. ZACK:

16 Q. You previously testified that this picture, which came off
17 your camera was taken with the timer?

18 A. Correct.

19 Q. How long did you have or did Mr. Noonan have to get back in
20 that bed after you hit the button to take the picture?

21 A. Okay. You're asking me to remember a piece of electronic
22 equipment that I only used for a short period of time, roughly
23 four and a half years ago and I couldn't tell you if that one
24 had two second, five second, ten second or thirty second,
25 because I don't remember.

Barry - Cross by Ms. Zack

1 Q. So you want us to presuppose that somebody in picture 31
2 jumped out of the tub, set the timer on the camera and jumped
3 back in the tub to take this picture?

4 A. I couldn't tell you that for a fact. But I can tell you
5 that I wasn't standing in there taking a picture.

6 MS. ZACK: Your Honor, we -- the United States would
7 ask that Exhibit 31 and 32 be admitted. And prior to that,
8 Your Honor, I would just like to point out in addition to the
9 fact that Mr. Barry saw this picture at the CPS trial, that his
10 attorney saw this picture at the CPS trial, that it is in the
11 forensic image --

12 THE COURT: Wait, wait. That what's in the forensic
13 image?

14 MS. ZACK: These two pictures, Government's Exhibit 31
15 and 32, are contained within the forensic image, Government's
16 Exhibit No. 2 --

17 THE COURT: Okay.

18 MS. ZACK: -- that has been previously admitted and
19 that was accessed by Mr. Barry's expert at the HSI office and
20 has remained available the entire time that this case has been
21 pending.

22 THE COURT: When was Exhibit 2 produced to or made
23 available to defense counsel in this case?

24 MS. ZACK: When discovery was first turned over, right
25 after he was indicted.

1 *THE COURT:* Okay. And by opening Exhibit 2, the
2 forensic image of the laptop and hard drive, would each of the
3 images contained within Exhibit 2 be visible or accessible?

4 *MS. ZACK:* Using the right forensic tools, yes.

5 *THE COURT:* And are those available to anybody who
6 would be retained as an expert in forensics?

7 *MS. ZACK:* Absolutely.

8 *THE COURT:* And would someone who does not have that
9 degree of expertise be able to access the images embedded in
10 the forensic hard drive -- in the forensic image of the hard
11 drive?

12 *MS. ZACK:* I couldn't open it.

13 *THE COURT:* That's my question, could you or I.

14 *MS. ZACK:* Right. But I can tell you that --

15 *THE COURT:* But an expert could?

16 *MS. ZACK:* An expert could. And on two separate
17 occasions, not including when the expert was here, Mr. Barry's
18 lawyer met with Special Agent Chappell, the occasion they
19 talked about with Mr. Eastepp being present, and at my office
20 right after I believe the arraignment or one of the hearings,
21 he and Ms. Minick came over and sat with Special Agent Chappell
22 and could look at anything they wanted to look at.

23 *THE COURT:* All right. And how long ago was that?

24 *MS. ZACK:* Well, he was indicted in June of 2013.

25 *THE COURT:* Were they permitted to take pictures of

1 what they viewed with them?

2 *MS. ZACK:* No, because they're child pornography.

3 *THE COURT:* I understand.

4 *MS. ZACK:* No.

5 *THE COURT:* Were they permitted to take notes of what
6 they viewed with them?

7 *MS. ZACK:* Absolutely. And they were provided --

8 *THE COURT:* And were they -- I'm sorry. I don't mean
9 to interrupt.

10 *MS. ZACK:* I'm sorry.

11 *THE COURT:* Were the photographs that were exhibited
12 during the HHS trial, the proceeding there --

13 *MS. ZACK:* The CPS trial?

14 *THE COURT:* CPS trial. I don't know why I said HHS.
15 CPS trial, were those images that were available to counsel of
16 record to retain?

17 *MS. ZACK:* I can't answer that question. But what I
18 can tell you is that based on the conversation that Special
19 Agent Chappell had with Special Agent McGaha, this came from
20 the EnCase preview that Special Agent McGaha did for that CPS
21 trial. I know that the pictures would have been, I believe,
22 available. I don't believe they are turned over. And I know
23 CPS has different discovery rules. But I do know that they
24 were admitted into the record in the CPS trial and so they had
25 to have been viewed at some point by -- and Mr. Barry actually

1 even testified that he saw them before the trial with Ms. Rush,
2 who is the CPS lawyer, and Mr. Jarvis.

3 *THE COURT:* One final question. When did you get them
4 from the CPS trial?

5 *MS. ZACK:* I got the transcript of the CPS trial --
6 when did that box arrive? Like April 13th, April 14th.

7 *THE COURT:* And when did you obtain the photograph?

8 *MS. ZACK:* It was in --

9 *THE COURT:* The two photographs.

10 *MS. ZACK:* They were in the -- in the CPS thing.

11 *THE COURT:* All right.

12 *MS. ZACK:* Now --

13 *THE COURT:* Was that transcript available to the
14 defense?

15 *MS. ZACK:* They ordered it first. We ordered a copy.

16 *THE COURT:* Okay. All right. Response?

17 *MS. MINICK:* Judge, when we met on those occasions
18 with Agent Chappell, we were -- we asked to see the evidence.
19 We asked to see the pictures they intended to use. We asked to
20 see the pictures that were in the exhibits that they intended
21 to use. There's no corresponding EXIF data to each of those
22 pictures. So could we take note -- we did not, of course, have
23 copies. Could we take notes of what the pictures were?

24 *THE COURT:* Was there any restriction placed on your
25 ability to have your -- well, first of all, were you there with

1 someone who knew how to open the contents of Exhibit 2?

2 *MS. MINICK:* No, we were with Agent Chappell, who
3 opened it for us.

4 *THE COURT:* That's my point. You were there with
5 someone who knew how to open and access the contents of Exhibit
6 2?

7 *MS. MINICK:* Correct. But I don't believe we --

8 *THE COURT:* Did he do that for you?

9 *MS. MINICK:* We did not -- no, that was not opened for
10 us. We only looked at 3, which showed us all the pictures --

11 *THE COURT:* Did you -- was there any restriction
12 placed on your ability to request that the contents of Exhibit
13 2 be opened and accessed?

14 *MS. MINICK:* Well, of course, at that time we -- there
15 was no exhibit list. So there was nothing -- we assumed that
16 when we -- when he was accessing what he was showing us, that
17 was the -- he was working from that exhibit, that forensic
18 image.

19 *THE COURT:* Okay. One is a subset of the other. Was
20 there --

21 *MS. MINICK:* Correct.

22 *THE COURT:* -- any indication that there were more
23 images other than the ones that you were shown or able to look
24 at during that time?

25 *MS. MINICK:* No. And, Judge, I would point out that

1 they amended their exhibit list as late as Monday.

2 *THE COURT:* All right.

3 *MS. MINICK:* And none of these were provided to us.

4 *THE COURT:* You got the transcript from the CPS trial
5 with these photographs, 31 and 32.

6 *MS. MINICK:* But not with the EXIF data. There was no
7 corresponding EXIF data.

8 *THE COURT:* 31 and 32, you got that?

9 *MS. MINICK:* We didn't get them. We had the
10 opportunity, I guess, to view those pictures.

11 *THE COURT:* I thought you just said -- I thought I
12 just heard from opposing counsel that you ordered the
13 transcript first, that it would have come with the images, and
14 that they, in fact, got a copy of what you had already
15 obtained. Is that incorrect?

16 *MS. MINICK:* Yes.

17 *MR. JARVIS:* That is correct.

18 *THE COURT:* It is correct?

19 *MR. JARVIS:* Yes, ma'am.

20 *THE COURT:* All right. So you certainly knew of the
21 images. What you're saying now is that you didn't know of the
22 associated data? Is that all I'm -- is that what I'm
23 understanding?

24 *MS. MINICK:* I'm sorry, Judge. Could you repeat that,
25 please?

1 *THE COURT:* You knew of the images and you saw in the
2 transcript the testimony as to the source of the images, where
3 they were discovered?

4 *MS. MINICK:* If I may consult with my co-counsel for
5 just a second.

6 *(Ms. Minick and Mr. Jarvis conferring.)*

7 *MS. MINICK:* At the CP -- no, we did not discover the
8 source. At the CPS trial --

9 *THE COURT:* You saw the transcript that described
10 whatever information is in the transcript as to the source?

11 *MS. MINICK:* There was no description in the
12 transcript of the source, Judge. At that time they didn't have
13 the EXIF data available.

14 *THE COURT:* That's not the question. There is
15 discussion in the transcript about where the pictures were
16 discovered, where they came from?

17 *MS. MINICK:* No, Judge, if I --

18 *THE COURT:* Is information available to those speaking
19 in the transcript about those subjects?

20 *MS. MINICK:* I believe that the impeachment with this
21 particular transcript is misleading, and I would ask -- like to
22 ask a couple of questions.

23 *THE COURT:* You certainly can. But the question is
24 only was there discussion in the transcript about where --

25 *MS. MINICK:* Not of this picture. There was a

1 discussion of it on the computer of it -- she's mistaken. In
2 the transcript, a different picture --

3 *THE COURT:* Which picture is it -- is referred to?

4 *MS. MINICK:* She asked him about who took Exhibit 16,
5 and he answers, "I believe Mr. Isaackson did." Well, whose --
6 and she asked -- she started with line 2 on page 91. "Whose
7 computer did that come off of?" And he says, "I believe it was
8 on mine." She's started with that testimony about these being
9 on his computer. Exhibit 16, he testifies is a picture taken
10 by Mr. Isaackson, that refers to the barbecue.

11 *MS. ZACK:* This is Exhibit 17 --

12 *THE COURT:* Okay.

13 *MS. ZACK:* -- in the CPS trial, not exhibit 16.

14 *MS. MINICK:* May I give the Court a copy?

15 *THE COURT:* Do you have a copy for -- give me page and
16 line so that --

17 *MS. MINICK:* Page 90 --

18 *THE COURT:* -- we can follow along.

19 *MS. MINICK:* Page 90, line -- do you want me to mark
20 it?

21 *THE COURT:* I would just like to see it, please.

22 *MS. MINICK:* Mr. Thomas --

23 *THE COURT:* No, not yet. Page 90, line what?

24 *MS. MINICK:* Line 25, I believe. It's the very last
25 line.

1 *THE COURT:* "Who took Exhibit 16?"

2 "I believe Mr. Isaackson did."

3 "Whose computer did that come off of?"

4 "I believe it was mine." And that's Mr. Barry.

5 "Exhibit 17," that's at line 4, "who took this
6 picture?"

7 "I don't know, but it wasn't --"

8 "It's facing down, right?" That's the next
9 question.

10 Answer: "Right."

11 And then it goes on to say, "What kind of camera
12 was that?"

13 "Just a small digital camera."

14 So it appears to be a reference by Mr. Barry to
15 the same camera as taking that picture.

16 *MS. MINICK:* But I believe --

17 *THE COURT:* "So somebody took this picture, right?"

18 Answer: "Well, it could have again been the
19 timer."

20 Do you have the next page, which would be page
21 92, please? Thank you. So -- and then there's some
22 discussion.

23 "It wasn't either of the boys?"

24 "Well, that's correct."

25 Question: "So it must have been Craig then?"

1 Answer: "Yes."

2 And then there's a discussion about pictures
3 number 21 and 22. And I don't know which ones those refer to.
4 But it does seem to be a discussion about the camera that was
5 the source of the picture.

6 *MS. MINICK:* If I may, Judge. Ms. Zack began her
7 questioning about the computer and this being -- this picture
8 being found on the computer, and she starts on page 91.

9 *THE COURT:* No, I agree. I agree. The reference to
10 the computer is about Exhibit 16. The discussion of the source
11 camera is on -- is with respect to the pictures at issue, which
12 is 17 in the CPS transcript. That's what I was getting at.

13 *MR. JARVIS:* And you're entirely correct, Judge. But
14 the CPS folks at the trial did not have any idea and
15 wouldn't -- could not tell us where any of the pictures came
16 from. They had a pile of pictures from HSI, from the Feds is
17 all Ms. Rush would ever say and had no idea what camera, what
18 computer or anything. These were just the images that were
19 given to them and they used them in court. And Mr. Barry
20 identified the ones he could identify. There wasn't a computer
21 expert, anybody that came in and said, like Mr. Chappell has
22 done, this picture came from here and was taken with that
23 camera on that date. They were just identified only by
24 Mr. Barry. So we didn't have any information which picture
25 came from where, which --

1 *THE COURT:* Well, you had what was in the CPS
2 transcript, which is what the Government had as well, plus the
3 additional data. So if I understand correctly, the Government
4 gets this transcript, which you've already had with these
5 photographs and with the testimony about the source camera for
6 these two -- or at least one of these photographs and they're
7 clearly taken at the same time, in the same place, after you
8 get it, the Government gets it. And at that point -- and that
9 appears to be recently. At what point -- but it doesn't get
10 added to the exhibit list at that point. Was that before trial
11 started?

12 *MS. ZACK:* We got the transcript -- yes, Your Honor,
13 we got the transcript before the trial. It was not
14 specifically added to the exhibit list, because it was already
15 contained in Government's Exhibit No. 2 that had already been
16 admitted.

17 *THE COURT:* But that had not been -- okay. And made
18 available to the expert witness of the Defendant?

19 *MS. ZACK:* Who came in December -- not December. When
20 did he come to your --

21 *MR. CHAPPELL:* In April.

22 *MS. ZACK:* In April --

23 *THE COURT:* April of?

24 *MS. ZACK:* This year.

25 *THE COURT:* And we're still in April.

1 *MS. ZACK:* Right, April 4th.

2 *MR. CHAPPELL:* I believe so.

3 *MS. ZACK:* I believe it was Friday -- I think it was
4 Friday, April 4th.

5 *THE COURT:* And able to look through Exhibit 2?

6 *MS. ZACK:* Absolutely, Your Honor.

7 *THE COURT:* All right.

8 *MS. ZACK:* He had access to the forensic images, to
9 everything that we have.

10 *THE COURT:* All right. And at what point did the --

11 *MS. ZACK:* And at that point, Your Honor, I didn't
12 know about this picture. They, who had been at the CPS trial
13 back in 2012, knew about this picture. I did not personally
14 know about this picture. I had not seen this picture and I did
15 not see this picture until April 13th, after their expert had
16 access to all of our stuff.

17 *MR. JARVIS:* But the problem with that is, Judge,
18 because we're not allowed to have the pictures, the expert gets
19 back on the plane and calls me and says, "Bob, there's a bunch
20 of other pictures. What were they?" "Well, I can't show them
21 to you. I wasn't given a copy." "Well, when were they made?"
22 I get nothing.

23 *THE COURT:* All right. Here's what I'm going to do:
24 I'm going to admit the two photographs. I am, however --
25 because I am going to issue findings and conclusions, as you've

1 requested, and they are going to not be immediately issued
2 obviously. It's going to take me a little bit of time. So if
3 you need to -- what I propose to do is allow you this evening,
4 since we're not going to finish today, to consult with your
5 expert and get any additional information that your expert can
6 provide you about this photograph -- these two photographs. If
7 depending on what he says, I will consider whether we need some
8 additional time, whether you want to call him, anything along
9 those lines. But --

10 *MS. MINICK:* May we --

11 *THE COURT:* -- I think there is enough information
12 available to me showing that you had knowledge or the ability
13 to have knowledge of the photographs and of their clear
14 association with the issues in this case not to be unfairly
15 surprised. It would have been obviously better had the
16 Government put this on the exhibit list originally, if they had
17 gotten the transcript earlier. All of that certainly would
18 have avoided the issue at all. But I think that the exhibits
19 are sufficiently tied to -- well, I think that the exhibits,
20 the two pictures were sufficiently established to have been
21 available to you, to your expert well in advance of the --
22 sufficiently in advance of the trial to avoid unfairness. And
23 any possibility of unfairness I will in turn minimize by giving
24 you the opportunity to talk to your expert and if we need to
25 make an adjustment depending on what your expert provides you

1 by way of reaction, I'll certainly consider that.

2 *MR. JARVIS:* We'll just need a copy of the EXIF data
3 so we can --

4 *THE COURT:* That's fine.

5 *MR. JARVIS:* -- he can review his computer -- that's
6 been the problem, without a picture --

7 *THE COURT:* You'll get the EXIF data.

8 *MR. JARVIS:* -- we can't compare it.

9 *THE COURT:* You'll get that. Right, Ms. Zack?

10 *MS. ZACK:* We can have a copy made right now.

11 *THE COURT:* Okay. That will be great. All right.
12 Let's continue, please.

13 *MS. MINICK:* Judge, could we also ask for a copy of
14 the picture to be made blacking out the inappropriate parts, if
15 necessary, so that we can have that in front of us to talk to
16 our expert about it, please?

17 *THE COURT:* I think that would be appropriate.

18 *MS. ZACK:* We'll have that taken care of.

19 *THE COURT:* All right. Thank you.

20 *MS. MINICK:* Judge, while we're at it, if we may,
21 could we also have a copy -- since that was a new creation of
22 Government's Exhibit No. 30, again, with the relevant portions
23 blacked out but enough for us to determine which photograph it
24 is that contains the EXIF data for each of the pictures on the
25 Messenger cache?

1 *MS. ZACK:* Judge, those pictures are tiny and I don't
2 know how we're going to -- I mean --

3 *THE COURT:* I don't think we need to do that at this
4 point. If you can figure out -- why don't you talk among
5 yourselves and see if you can figure out a way to handle the
6 logistics of that. If you can't, I'm happy to hear --

7 *MS. ZACK:* We may be able to do that. We're going to
8 try.

9 *THE COURT:* Yeah, I would hope that you could and it
10 would probably be a better way to proceed. All right.

11 *MS. ZACK:* So, Your Honor, may I continue to question
12 about these pictures even though they're not --

13 *THE COURT:* I've admitted them, subject to --

14 *MS. ZACK:* Okay.

15 *THE COURT:* So the answer to that is, yes. But we're
16 going to take a 15-minute break. How long do you-all want to
17 work this evening? Because I've got to take a brief call.
18 It's just one of those days.

19 *MS. ZACK:* Since we're not going to finish, Your
20 Honor, if we could stop at 5:15.

21 *MS. MINICK:* Judge, if you have a call, I know
22 Ms. Zack has an issue with her son, which I completely
23 understand.

24 *THE COURT:* No, I'm figuring that out.

25 *MS. MINICK:* And we would probably need to get ahold

1 of our expert pretty soon.

2 *THE COURT:* Right.

3 *MS. MINICK:* It might be a good time to break.

4 *THE COURT:* So why don't we end now, give you that
5 opportunity. That seems to make sense.

6 *MS. MINICK:* Okay.

7 *THE COURT:* We are finishing tomorrow.

8 *MS. MINICK:* Yes, we all would like that.

9 *THE COURT:* I don't want you to have to come back
10 Monday, because I cannot be here Friday, and tomorrow I have to
11 end at 3:30.

12 *MS. ZACK:* I don't have --

13 *THE COURT:* And that's a hard stop for tomorrow.
14 Everything else is okay tomorrow.

15 *MS. ZACK:* I don't have a great deal more necessarily
16 with Mr. Barry, maybe 20, 30 minutes and then --

17 *THE COURT:* But they're going to have some significant
18 redirect, I assume.

19 *MS. MINICK:* Some.

20 *THE COURT:* Some. And that's fine. I'm not being
21 critical in the slightest. I'm just trying to schedule. Okay.
22 So let's -- yeah, I only have one interruption during the
23 morning. So let's plan on no later than 8:30.

24 *MS. ZACK:* Yes, Your Honor.

25 *THE COURT:* All right.

1 *MR. JARVIS:* Yes, ma'am.

2 *THE COURT:* All right. Good.

3 *MS. MINICK:* Thank you, Judge.

4 *THE COURT:* All right. Thank you very much.

5 || (Concluded at 4:30 p.m.)

6 || * * *

7 I certify that the foregoing is a correct transcript from the
8 record of proceedings in the above-entitled cause, to the best
9 of my ability.

10

11 /s/ *Kathy L. Metzger*
Kathy L. Metzger
12 Official Court Reporter

4-11-2015
Date

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